

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

JORDAN BLAIR,)
)
Plaintiff,)
)
vs.) No. 1:02-CV-88 CAS
)
BOB WILLS, ET AL.,)
)
Defendants.)

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

April 13, 2004
Volume II

APPEARANCES:

For Plaintiff: Mr. Oscar Stilley
511 Rogers Avenue
Central Mall Plaza, Suite 520
Fort Smith, AR 72903

For Defendants: Mr. John L. Oliver, Jr.
OLIVER, OLIVER & WALTZ
400 Broadway, P.O. Box 559
Cape Girardeau, MO 63702

Mr. John D. Briggs
BROWN AND JAMES
1010 Market Street, 20th Floor
St. Louis, MO 63101

REPORTED BY: SUSAN R. MORAN, RMR
Official Court Reporter
111 South 10th Street
St. Louis, MO 63102
(314) 244-7983

Proceedings recorded by mechanical stenography, produced by
computer-aided transcription.

1	I N D E X			
2		Direct	Cross	Redirect Recross
3	PLAINTIFF'S WITNESSES			
4	JORDAN BLAIR			
5	(By Mr. Stilley)	3	(Cont'd)	
6	(By Mr. Briggs)	32		
7	(By Mr. Stilley)			54
8	RAY PALMER			
9	(By Mr. Stilley)	188		
10	(By Mr. Oliver)		201	
11	DEFENDANTS' WITNESSES			
12	BO GERHARDT			
13	(By Mr. Briggs)	78		
14	(By Mr. Stilley)		96	
15	ROBERT O'BRIENT			
16	(By Mr. Oliver)	126		
17	(By Mr. Stilley)		139	
18	(By Mr. Oliver)			149
19	(By Mr. Stilley)			150
20	SAM GERHARDT			
21	(By Mr. Briggs)	154		
22	(By Mr. Stilley)		170	
23	DREW PARRISH			
24	(By Mr. Briggs)	207		
25	(By Mr. Stilley)		211	
26	INSTRUCTION CONFERENCE			
27			219	
28	E X H I B I T S			
29		Offered	Received	
30	DEFENDANTS' EXHIBITS			
31	C, D	149	149	
32	A	207	207	

1 (The following proceedings were held outside the
2 hearing of the jury on April 13, 2004 at 9:12 a.m.:)

3 THE COURT: Good morning. Anything before we bring
4 the jury out?

5 MR. OLIVER: Yes, sir, if I could. We agreed by
6 redaction to change parts of Defendants' Exhibit A. And I
7 made an extra copy of the first three pages for the Court.
8 I've given Mr. Stilley his copy. It's my understanding he
9 approves the redactions.

10 MR. STILLEY: That is correct, Your Honor, we're
11 satisfied with that.

12 THE COURT: Okay, thank you. Let's bring the jury
13 on. Mr. Blair, you want to resume the stand.

14 THE WITNESS: Yes, sir.

15 (The following proceedings continued within the
16 hearing of the jury:)

17 THE COURT: Good morning, ladies and gentlemen of
18 the jury. Shall we resume, Mr. Stilley.

19 MR. STILLEY: Thank you, Judge.

20 DIRECT EXAMINATION (Cont'd)

21 BY MR. STILLEY:

22 Q. Mr. Blair, can you tell us when your 17th birthday was?

23 A. November 17th, 2001.

24 Q. And you told us about the battery yesterday. Who were
25 the witnesses to that battery?

1 A. Matt Elmore, Jason Lowe, and Andrew Parrish.

2 Q. Okay.

3 A. And Bill Cavitt.

4 Q. Are any of those individuals -- any of those
5 individuals defendants in this lawsuit?

6 A. Yes, sir.

7 Q. And who would that be?

8 A. Bill Cavitt and Andrew Parrish.

9 MR. BRIGGS: Objection, Your Honor. Mr. Cavitt is
10 not a party to this lawsuit.

11 MR. STILLEY: That is correct, Your Honor. I'm
12 sorry. I think he's probably just forgotten that.

13 BY MR. STILLEY:

14 Q. Do you see Andrew Parrish in this courtroom today?

15 A. No, sir.

16 Q. Now, I asked you yesterday about what sports that you
17 were involved in before you went to Mountain Park. Did you
18 forget one of those?

19 A. Yes, sir, Tai Quon Do.

20 Q. And where is it you do the Tai Quon Do?

21 A. At church.

22 Q. And who did you do it with?

23 A. The other church members.

24 Q. When you were at Mountain Park, what punishments were
25 you told about for misbehavior?

1 MR. BRIGGS: Objection, Your Honor, this stuff is
2 irrelevant unless he was told by a staff member. I think
3 that it's also vague. Mr. Stilley would have to narrow his
4 question.

5 MR. STILLEY: Judge, let me withdraw that question.
6 I'm not trying to go I think where they think. I'm trying to
7 go -- I think I can make it easier. Just withdraw that
8 question and ask another one.

9 BY MR. STILLEY:

10 Q. Mr. Blair, were you punished with disciplinary
11 punishments such as swats or having to write lines while you
12 were at Mountain Park?

13 MR. BRIGGS: Objection, Your Honor, relevance. It
14 doesn't relate to the battery claim or the Fair Labor
15 Standards Act.

16 MR. STILLEY: I'm just trying to demonstrate that he
17 was not -- he didn't create problems while he was there.

18 MR. BRIGGS: Your Honor, I'm still not sure if
19 that's relevant.

20 THE COURT: You need to try your question again.

21 MR. STILLEY: Okay. I'll just go to another line of
22 questions. Thank you.

23 BY MR. STILLEY:

24 Q. While you were at Mountain Park, were you provided any
25 age appropriate classes?

1 A. No, sir.

2 Q. Did you get credit for any course work that you did?

3 A. No, sir.

4 Q. Did you actually learn anything in classes?

5 A. No, sir.

6 Q. Did you ever see a written schedule for the students?

7 A. No, sir.

8 Q. What was the actual schedule of your activities? Can
9 you just explain to the jury what you would do on a typical
10 weekday?

11 A. It pretty much varied from day to day. The schedule
12 that Mr. Oliver presented earlier in his opening statement.

13 MR. OLIVER: Your Honor, I'd object to the witness
14 commenting on the opening statement. I mean, we're already
15 three violations of your court order.

16 THE COURT: All right, fine. Why don't you just
17 answer the question as opposed to referring to Mr. Oliver.

18 THE WITNESS: Yes, sir.

19 A. Mr. Stilley, could I see a copy of the defendants'
20 exhibits, please.

21 Q. Actually we're not trying to get you to comment on
22 anything else, we just want to know what you did based on
23 your personal recollection of what you actually did.

24 A. Yes, sir. I would wake up around 5:30 in the morning,
25 be woken up around 5:30 in the morning. Would then have to

1 have a prayer session. And then I would have to do chores
2 which lasted about 45 minutes to an hour. I then have to --
3 we'd go have breakfast. Then I'd come back and we'd have
4 more indoctrination meetings. And then I would go to school
5 doing fifth grade work even after I graduated. I would have
6 to --

7 MR. BRIGGS: Objection, Your Honor, it's outside the
8 scope. It's irrelevant.

9 THE COURT: Fine. Overruled. Go ahead.

10 A. Then -- and that would last from about nine o'clock
11 till noon. And after lunch, which would be around there, we
12 would -- sometimes we would go to an afternoon class or
13 something like that or on some days we wouldn't even go to
14 school. I mean, we would just go and this would be through
15 the week on a school day, and we would be taken to Brother
16 Wills' house where we would wax his boat, do lawn
17 maintenance, wash their cars, wax their cars.

18 On -- I've done anything from changing the oil in
19 their cars, rotate tires. I performed maintenance on
20 backhoes. I've installed water pipe, repaired water piping.
21 Installed toiletry -- toilets. And this would take place on
22 throughout the day.

23 Now, the only thing that was pretty much on a steady
24 pace would have been the indoctrination meetings which went,
25 which, you know, I willingly went to and voluntarily which

1 took place on a Wednesday night, on Sunday mornings, and then
2 at least for an hour on every week night. So that's
3 basically how the week went.

4 Q. Now, you told us about some chores, correct?

5 A. Yes, sir.

6 Q. Tell us what you mean when you say chores.

7 A. Well, with the chores I look at something of a personal
8 responsibility. I mean, I understand -- my understanding is
9 that you would have to make your bed, clean up around the
10 dorm, the dorm area that you lived in. Clean the bathrooms,
11 that sort of thing. And that's my understanding of chores.

12 Q. Okay. Are you asking this jury to assess monetary
13 damages for you having to do chores?

14 A. No, not at all.

15 Q. Now, you tell us a little bit about the schedule. But
16 what did you do at the end of the day? The evening, what was
17 your typical schedule in the evening?

18 A. What exact time?

19 Q. Well, after say five o'clock.

20 A. After five o'clock. Five o'clock we'd usually shower
21 and then have dinner. Then I would -- we would -- I would be
22 forced to attend the indoctrination meetings.

23 Q. And how long did those meetings last?

24 A. From -- anywhere from an hour and a half to two hours.

25 Q. Per day?

1 A. Yes, sir.

2 Q. Was that every weekday?

3 A. Yes, sir.

4 Q. How -- what was the difference between weekdays and
5 Saturdays and Sundays?

6 A. On Saturdays we would get up at 6:30 a.m. Then there
7 would be no school. We would work all day doing various
8 tasks that I've just told the jury about. And we would have
9 lunch and then we'd work some more until five o'clock, which
10 we would shower then for dinner.

11 Q. Okay. What did you do after dinner?

12 A. We would have -- well, on Saturday we'd have the same
13 meetings. Then on Sunday we would have -- we wouldn't work
14 in the morning, we'd have -- I'd be forced to go to
15 indoctrination meetings, have lunch, and then we would just
16 have a little -- I would be -- I'd have another
17 indoctrination meeting with an orientation guide, that sort
18 of thing. And then we'd have dinner and that would be the
19 day.

20 Q. What was the latest that you ever had to do work?

21 A. On the tasks that I had previously mentioned, till
22 about five o'clock. Now, as far as being a security guard,
23 that was 24/7.

24 Q. Okay. What about -- were you ever required to have
25 somebody move?

1 A. Oh, yes, sir. Yes, sir. Sorry about that. When Aaron
2 Smith was moving out from Palm Lane we were required to stay
3 up late moving all of his belongings out into a moving van.
4 And that lasted about a week. We moved O'Brient back in and
5 we were forced to stay and move all the things in for them.

6 Q. And how late did you work on that?

7 A. Till about midnight or one.

8 Q. What time did you have to get up the next morning?

9 A. At 5:30.

10 Q. Did you volunteer for that duty?

11 A. No, sir, nobody did.

12 Q. Did you complain about that duty?

13 A. No, sir.

14 Q. Why not?

15 A. I wasn't allowed to.

16 Q. Okay. You told us about some of the jobs that you did.
17 Did you ever see -- while you were at Palm Lane did you ever
18 see any cattle?

19 A. Yes, sir.

20 Q. Did you have any jobs with respect to the cattle?

21 A. Yes, sir, for the longest time at Palm Lane we repaired
22 all the cattle's fences and stuff like that. We were -- it
23 was kind of a metal fencing all the way around on some areas
24 where the cattle stayed, and we had to sand all the fences
25 out, prime it and then paint it. And this lasted basically

1 pretty much my whole stay at Palm Lane, which was a total of
2 four months. Then also occasionally the cattle would get out
3 from a hole in the barbed wire fence and we'd have to go
4 chase them out, repair the barbed wire, heard the cattle back
5 in.

6 We'd also had to use weed hooks to chop down. I
7 know Ms. Wills earlier stated in her testimony that --

8 MR. BRIGGS: Objection, Your Honor, move to strike.

9 MR. STILLEY: There's no necessity for that.

10 THE COURT: Fine. The Court will strike that.

11 MR. BRIGGS: Instruct the jury to disregard, Your
12 Honor.

13 THE COURT: The jury will disregard.

14 MR. STILLEY: Thank you, Judge.

15 BY MR. STILLEY:

16 Q. Okay. Just go ahead and testify your personal
17 knowledge what was actually done.

18 A. We had to cut weeds down along the fences for the
19 cattle. We'd spend a whole day. That would have been like a
20 Saturday job where we'd spend a whole day working on that. I
21 would wear gloves and still have blisters on my hands from
22 doing that all day in the hot sun.

23 Q. Did you have any pasture maintenance duties besides
24 using the weed hook?

25 A. Not any more than I've already mentioned.

1 Q. Did you have any job duties relating to watering the
2 cattle or providing for a source of water for the cattle?

3 A. Oh, yes, sir. We were being forced to dig a pond for
4 the cattle by shovel. And that was a whole week job. I had
5 left pretty much after we started that.

6 Q. Okay. So you left while the pond digging project was
7 underway?

8 A. Yes, sir.

9 Q. And did you have wheelbarrows that you used? How did
10 you get the dirt out of the pond?

11 A. We just had to shovel it off the side at a time.

12 Q. Was it just shovels you used to dig this pond?

13 A. Yes, sir. Well, the staff member Robert Kennedy was
14 using a small bulldozer, just a smaller size one.

15 Q. Okay. So then were you just doing the dressing around
16 the edges then with the shovels?

17 A. Yes, sir. We also after he had -- after Robert Kennedy
18 had dug out somewhat, about eight feet deep, we were down
19 there having to clean that out.

20 Q. Did you dig in the bottom of the pond?

21 A. Yes, sir.

22 Q. How many students were involved in this project?

23 A. It was all the boy students at Palm Lane. I would say
24 between 11 and 15 students.

25 Q. Did you work -- when this project was underway, did you

1 work each day all day or did you go to these classes that you
2 previously told us about for part of the day?

3 A. I would go to the classes for part of the day, mainly
4 for the morning. But sometimes we wouldn't even go to
5 afternoon, we'd just go work. That was basically how that
6 went towards the pond digging.

7 Q. Were you also required to provide services in the
8 nature of security services?

9 A. Yes, sir.

10 Q. And can you -- how did you find out that you had to
11 provide these services?

12 A. I was told by Robert Kennedy. I was told by
13 orientation guides and other staff.

14 Q. What did they tell you that your job duties as a
15 security guard were generally?

16 A. I was to make sure that nobody got away, no one ran
17 away. I was to tackle them if anyone started to run away. I
18 was to without question back up any person in authority so to
19 speak, whether it was orientation guides or a single student
20 or a staff member. If a student at whatever ranking had
21 provoked or was being displeased towards the staff member,
22 we were to restrain him.

23 MR. BRIGGS: Your Honor, this is irrelevant. This
24 is outside the scope. You ruled on this yesterday.

25 THE COURT: Go ahead.

1 A. At nighttime we were to always be awake. We would try
2 to sleep, but if anybody got up, we were to be awake. We
3 were also always if someone gotten up, make sure there were
4 more than one person with them, that we were watching their
5 every move. We had to put bunk beds in front the doors so
6 all the doors were blockaded. We also had security alarms
7 that we were to have turned on at night, make sure we turn
8 them off during the day. If they went off at night, we were
9 supposed to be up and, you know, ready to restrain any
10 individual that wasn't supposed to be up.

11 Q. Were there any kind of security devices that you were
12 made aware of that you were supposed to listen for?

13 A. Yes, sir.

14 MR. BRIGGS: Objection, Your Honor, may we approach?

15 THE COURT: Come on.

16 (The following proceedings were held at the bench
17 and outside the hearing of the jury:)

18 MR. BRIGGS: Your Honor, yesterday during pretrial
19 you specifically ruled that references to Palm Lane and
20 Mountain Park that made it sound like a prison or a lockdown
21 facility were inappropriate and outside the scope. Whether
22 there were security devices does not relate to the battery.
23 It doesn't relate to the Fair Labor Standards Act claim
24 either.

25 THE COURT: Well, it's describing -- I see this,

1 there's a line there. But he's talking about what he had to
2 do as part of his job. As long as he's talking about what
3 Mr. Blair had to do as part of what he claimed is a job,
4 employment, then I'm going to allow it.

5 MR. OLIVER: Well, Judge, he shouldn't be allowed to
6 use obviously rehearsed pejorative answers like restrain
7 other students.

8 THE COURT: You all can cross-examine him about
9 that. He says that's what he was supposed to do.

10 MR. OLIVER: Well, Your Honor, by my count he's
11 violated your direct orders from yesterday four times today
12 and nine times yesterday. I mean, it seems it's time to -- I
13 would ask the Court to ask Mr. Stilley to conform to the
14 Court's orders.

15 THE COURT: He's doing better than he did yesterday.

16 MR. OLIVER: Well, that's true. But now all he's
17 done is spend all night coaching Jordan Blair to come up
18 with these -- slip in these snippets like what I said or what
19 Ms. Wills said.

20 MR. STILLEY: I didn't. And we'll be done here very
21 shortly.

22 MR. OLIVER: Judge, let me tell you that that's a
23 prevarication. He did spend the night just like he spent
24 every recess after coaching these witnesses he's got outside
25 in violation of the rules.

1 MR. STILLEY: Your Honor, I did not coach any
2 witnesses.

3 THE COURT: Fine. Let's hurry up with this witness.

4 (The following proceedings continued within the
5 hearing of the jury:)

6 BY MR. STILLEY:

7 Q. Did you have any security devices that was part of your
8 job to listen for?

9 A. Yes, sir.

10 Q. And what were those or what were those?

11 A. I don't know exactly what type they were. I know that
12 the two at Palm Lane were bought at Radio Shack. Basically
13 it was a very high pitched screeching noise that you would
14 hear. So you would definitely know if someone -- well, they
15 were motion detectors is what they were. And they were put
16 over entryways. And those were basically what they were.

17 Q. And did anybody explain to you as part of your job
18 duties what would typically cause these devices to sound?

19 A. I didn't need any explanation for it. I mean, you
20 stuck your hand in there, it was a motion detector and it
21 would go off.

22 Q. Where was this located in relation to where you slept?

23 A. At Mountain Park it was located downstairs. All the
24 exits upstairs were blockaded. I believe there was only one
25 exit upstairs. That was blockaded totally, and a staff

1 member slept there, so there wasn't any way of leaving there.
2 There might have been one on there, but I can't be sure about
3 that.

4 Q. You sure about that?

5 A. However, there was one downstairs that was in front of
6 the stairwell so you could not go down the stairs without
7 setting that motion detector off.

8 Q. Did this motion detector ever go off while you were
9 there?

10 A. Yes, sir.

11 Q. And why did it go off?

12 A. Someone was going downstairs to use the bathroom I
13 believe. At least that's what they said.

14 Q. Was it possible they used the bathroom without going
15 downstairs?

16 A. No, sir, unless you went in your pants or something
17 like that.

18 MR. OLIVER: What does this have to do with the job?

19 MR. BRIGGS: Objection.

20 THE COURT: Fine. Move on from this.

21 MR. STILLEY: Certainly, Judge.

22 THE COURT: We're talking about his job, not what
23 somebody else was doing. Please. His job.

24 MR. STILLEY: Certainly.

25 MR. OLIVER: This is just what I raised at the

1 bench. This is purposeful.

2 THE COURT: Fine.

3 BY MR. STILLEY:

4 Q. Okay. Getting to your duties with respect to security,
5 about how much sleep did you get each night?

6 A. Four hours of sleep.

7 MR. BRIGGS: Objection, this is outside the scope.

8 MR. OLIVER: Already ruled.

9 THE COURT: One at a time now. We're not going to
10 tag team over there.

11 MR. STILLEY: Judge, I'm just --

12 THE COURT: No, you know, it's like is the glass
13 half empty or is it half full? Now he talked about -- if
14 you're claiming hours he's worked, how many hours he worked,
15 see. What I'm saying, do you understand that? Do you
16 understand that?

17 MR. STILLEY: Yes, I do.

18 THE COURT: Fine. Then take it that way, not how
19 many he slept, how many hours he worked.

20 MR. STILLEY: Certainly.

21 THE COURT: Fine. You get it?

22 MR. STILLEY: Certainly.

23 THE COURT: Fine.

24 BY MR. STILLEY:

25 Q. How many hours did you work as a security guard?

1 A. As I said earlier, it was a 24/7 job. I guess you
2 could say between 9 p.m. and 5:30 a.m. sort of on call.

3 MR. STILLEY: You know, can we approach about
4 something? And I hate to do this, but it's a legal issue
5 that needs to be raised and I can explain it to you. I'm
6 just trying not to raise anything that I shouldn't.

7 THE COURT: I know you will explain it to me. Come
8 on.

9 (The following proceedings were held at the bench
10 and outside the hearing of the jury:)

11 MR. BRIGGS: Just for the record, Your Honor, before
12 he starts, the on call comment that his client so aptly threw
13 in there is outside the scope of this claim. There's been no
14 allegation that he had to be on call for anything. That's a
15 specific section of the Act.

16 THE COURT: I'm sure you will cross-examine him
17 about that and say this was never mentioned before.

18 See, you are still on your lineup. See, if you come
19 with how many hours you working, then it's the sleeping is
20 obvious. You got to stay on working, on the job.

21 MR. STILLEY: Right.

22 THE COURT: You want to open the door and wait to
23 let, you know, your client say anything he wants to say. You
24 know, hoping that he can say something. You know, and you
25 need to stop that. Let's get on with the show.

1 MR. STILLEY: The reason I came over here is, where
2 I want to go, but I don't want to do it if the Court does not
3 want me to do that, I don't want to do anything the Court
4 feels is inappropriate, but I want you to understand why I
5 think it is appropriate.

6 THE COURT: What are you talking about?

7 MR. STILLEY: There is a case that says if you get
8 less than five hours of sleep per night that you're entitled
9 to full pay all night for your duties.

10 THE COURT: Well, hold on. You're a nice fella.

11 MR. STILLEY: Right.

12 THE COURT: But some people are insomniacs. So they
13 are supposed to be paid because they are insomniacs, huh?
14 It's not about how much sleep, it's about how much work. You
15 got it?

16 MR. STILLEY: Well, I want to preserve the record.

17 THE COURT: The record is preserved. You need to
18 talk about how much work. Now, you said he was on call all
19 night, fine. Case closed.

20 MR. STILLEY: Well, if he was allowed to testify, he
21 would testify that he got less than five hours of sleep a
22 night.

23 THE COURT: Well, that -- you know, some people get
24 no sleep because they are insomniacs, you see, so I'm not
25 going there. What you're talking about is that he worked so

1 many hours that there were only five hours left. So that's
2 what you need to be focusing on. Okay. It's how many hours
3 worked. Now, if he's on call all night, you're saying he
4 worked all night. Fine, that's what you say. Okay.

5 MR. STILLEY: Does that mean then that I wouldn't be
6 allowed to ask him how many hours of restful sleep that he
7 was able to get each night?

8 THE COURT: No, you will not be able to ask that.

9 MR. STILLEY: Okay. I just can't understand --

10 THE COURT: Because we are not getting into whether
11 or not he had some medical problem sleeping or anything of
12 that nature. You talked about he was on call all night.

13 MR. STILLEY: Okay.

14 THE COURT: So you basically said he worked 24/7.
15 That's what you just said, you said he worked 24/7.

16 MR. STILLEY: That is exactly what I said.

17 THE COURT: Fine. What more do you want? Is there
18 any more time? You know, it's like talking about this guy
19 that had three jobs, three full-time jobs, and he got
20 overtime on all of them. Please.

21 MR. STILLEY: I know some lawyers like that.

22 THE COURT: I know. I know. But you've already
23 said he's working 24/7, that he was on call all night. How
24 much more time is it?

25 MR. STILLEY: I think I preserved the record on

1 that. I just wanted to establish what I was trying to get
2 the point.

3 THE COURT: I understand.

4 MR. OLIVER: Your Honor, again, with due respect to
5 the Court and Mr. Stilley, I would beg the Court to require
6 Mr. Stilley to control his client. His client is
7 intentionally -- there can be no doubt about it now that his
8 client is intentionally going over the lines the Court set in
9 the pretrial.

10 THE COURT: I think what happens to some degree is
11 that while the client has a real emotional stake in this
12 thing, and he's a young person, so I would expect Mr. Stilley
13 to exercise some control by asking questions and not waiting,
14 you know, just opening the door and whatever comes out comes
15 out. You got to go and ask questions. You seem to want to
16 let your client say anything he wants to say. But you have
17 to take control of this.

18 MR. STILLEY: Certainly, Judge.

19 THE COURT: And you know what, when you take
20 control, the people you're selling to will respect you more.
21 You know who you're selling to?

22 MR. STILLEY: I'm selling to eight people sitting in
23 the box.

24 THE COURT: That's right, so take control.

25 MR. STILLEY: Certainly.

1 THE COURT: Because otherwise you're not going to
2 sell it, okay. You better take control.

3 MR. STILLEY: I certainly understand that.

4 THE COURT: Because it's like you're letting it fly
5 anyplace. It's like you don't necessarily believe in it
6 yourself. You're just whatever the client says. It's like
7 the client selling the case. You have to take control.

8 MR. STILLEY: Judge, I intend to take control.

9 THE COURT: Because he is but 19 years old. I think
10 all these people are over 40.

11 MR. OLIVER: He's 19 years old and he's given the
12 answers Mr. Stilley has told him to give. It's plain and
13 apparent.

14 THE COURT: Take control. Take control.

15 MR. STILLEY: Let me say this and save some trouble
16 and go ahead and ask the Court, and I want to preserve the
17 record on this and I want to get the ruling on this. The
18 next question I want to ask is about his security guard
19 duties with respect to toileting. And I would anticipate
20 that he would say he was slammed up against the wall, yanked
21 off the toilet, and it's his job to keep them from causing
22 any problem for the people that just did that to them. I
23 want to preserve the record. I want to preserve that
24 testimony.

25 THE COURT: You already said it's more prejudicial

1 than probative. You've already said that he was supposed to
2 back up any actions of any people in authority or other
3 students who were in authority. So please.

4 MR. STILLEY: Well, I want a ruling on that. If you
5 rule me not to do --

6 THE COURT: Yeah, I just told you, I'm excluding
7 that.

8 MR. STILLEY: Fine.

9 THE COURT: You just said he's supposed to back up
10 anybody. See, you keep wanting to show these very bad kinds
11 of things. You want to show other alleged batteries and so
12 forth. That's what you want to do. And so when you're
13 trying to prove a case of battery, I mean, that is not part
14 of, you know, this case.

15 MR. OLIVER: It's a violation of Rule 403 and
16 404(c).

17 MR. STILLEY: I'm trying to --

18 THE COURT: I'm not allowing that.

19 MR. STILLEY: I'm not trying to bring anything
20 before the jury that I shouldn't, but I do want to protect
21 the record.

22 THE COURT: Since when?

23 MR. OLIVER: He spent two days --

24 THE COURT: When did you change?

25 MR. STILLEY: Judge, I'm trying to walk this line

1 and vigorously represent my client and I have 100 percent
2 respect for the Court. But I just got -- I just got two
3 more. And I just asked you about also --

4 THE COURT: You still got the same script.

5 MR. STILLEY: No, this is a different script. And
6 everything it says, what were your duties.

7 THE COURT: You're just singing in a different
8 pitch, but it seems like it's the same song.

9 MR. STILLEY: Judge, if I can get a ruling on this,
10 if you give a ruling, I'll respect it.

11 THE COURT: What is it?

12 MR. STILLEY: What were your duties as a security
13 guard relating to physical altercations?

14 MR. OLIVER: Asked and answered.

15 MR. BRIGGS: Asked and answered.

16 THE COURT: You asked that about if there was any
17 kind of action going on by people in authority, what was he
18 supposed to do, he was supposed to back them up without
19 question.

20 MR. STILLEY: And what were your duties as a
21 security guard relating to runaways?

22 MR. OLIVER: Asked and answered, volunteered
23 answers.

24 THE COURT: He was supposed to restrain people.
25 We've already got that.

1 MR. STILLEY: Okay. I just wanted to -- you're
2 ruling that neither of those can come in, correct?

3 THE COURT: Asked and answered, that's my ruling.
4 They've objected to it on the basis it's been asked and
5 answered, and I'm agreeing with that.

6 MR. STILLEY: Thank you very much. That's not a
7 problem. Thank you. I mean, I reserve my objection.

8 THE COURT: Fine.

9 MR. STILLEY: But I want to get it on the record.

10 THE COURT: Fine.

11 MR. STILLEY: Thank you, Judge.

12 (The following proceedings continued within the
13 hearing of the jury:)

14 BY MR. STILLEY:

15 Q. You talked about various jobs, doing things like
16 digging ponds. Can you explain to the jury how that you've
17 calculated your weekly hours on those particular duties?

18 A. Well, see, it was so varied, there was such a variation
19 between our daily activities, so I had a breakdown of about
20 how long it took for us to do a job and how long it took for
21 me -- the labor that I performed on that job. Basically
22 pretty much if I remember, I just kind of pieced together how
23 much -- how many hours I worked on any specific job.

24 Q. So what's a fair estimate of hours per week?

25 MR. OLIVER: Objection, estimate.

1 THE COURT: Overruled.

2 A. Anywhere between 15 to 27 hours.

3 Q. Okay. And how did you calculate that?

4 A. Well, see, if it stayed where we didn't leave the camp,
5 the property, it was pretty much between 15 and 20 hours.
6 Now, if we had taken -- and we didn't go to school at all
7 during the week -- during a school day and say we went to Bob
8 Wills' house or -- yeah, Bob Wills' house, then that would
9 add on extra hours for that week.

10 Q. Did you get to play sports while you were at Mountain
11 Park or Palm Lane?

12 A. Yes, sir.

13 Q. And what sports did you get to play?

14 A. We played baseball, basketball, volleyball.

15 Q. And how many times did you get to play baseball?

16 A. Played baseball once at Mountain Park and about twice
17 at Palm Lane.

18 Q. How about basketball?

19 A. Once at Mountain Park and about three or four times at
20 Palm Lane.

21 Q. And how about volleyball?

22 A. None at Mountain Park, about eight or nine times at
23 Palm Lane.

24 Q. Did you ever get to go swimming?

25 A. Yes, sir.

1 Q. How many times?

2 A. I believe twice at Bob Wills' house.

3 Q. I want to draw your attention to Plaintiff's
4 Exhibit 10. Can you tell the jury why you think this
5 letter -- well, first of all, tell the jury what this is.

6 A. This is a letter written from me to my parents on
7 October 9, 2001. I would have been at Mountain Park.

8 Q. And is all the writing on this letter yours?

9 A. No, sir.

10 Q. And where is the other writing?

11 A. It seemed to either been on the back of the page --

12 MR. BRIGGS: Your Honor, objection. May we
13 approach?

14 MR. OLIVER: He's going to censorship. That
15 doesn't --

16 THE COURT: Well, I don't know where you all are
17 going. Where are we?

18 MR. BRIGGS: It's irrelevant. This isn't relating
19 to the battery or the Fair Labor Standards Act claims.

20 MR. STILLEY: Your Honor, I'm trying to identify
21 which of the words in the letter were --

22 THE COURT: What does this have to do with
23 employment, Fair Labor Standards Act, or the battery? What
24 does it have to do with one of those?

25 MR. STILLEY: Well, he was asking for work boots in

1 this letter. However, the entire letter is admitted. And on
2 a number of these letters including this one there were
3 matters that were written in by one of the Gerhardts. I
4 believe this one is by Sam Gerhardt.

5 THE COURT: So.

6 MR. STILLEY: I'm just trying to establish --

7 THE COURT: What does it have to do with either of
8 those two issues, battery or Fair Labor standards?

9 MR. STILLEY: Well, I'm just trying to establish
10 that it was not all his words.

11 THE COURT: So.

12 MR. OLIVER: Your Honor, we agree that his words are
13 his words, that his words are in evidence.

14 MR. BRIGGS: We don't dispute that. Moreover --

15 THE COURT: Well, you know, what does the letter
16 have to do with this case? That's what I'm talking about.

17 MR. STILLEY: What it has to do with this case is he
18 was asking for work boots. And the reason that --

19 THE COURT: Fine. Then you can ask him did he write
20 a letter asking for work boots and is this the letter.

21 MR. BRIGGS: Your Honor, I'd object to the extent
22 that it calls for hearsay.

23 THE COURT: Overruled. I'll allow you to ask that.

24 MR. STILLEY: Okay. But not anything about anybody
25 else's writing?

1 THE COURT: Please. I keep telling you, if it
2 doesn't have to do with the battery or Fair Labor Standards
3 then forget it. We don't want to hear it.

4 MR. STILLEY: Okay. Thank you, Judge.

5 THE COURT: We want to finish this case within our
6 lifetimes, you know.

7 MR. STILLEY: Okay, Judge.

8 THE COURT: We got to hear everybody in the world,
9 we'll be here forever.

10 BY MR. STILLEY:

11 Q. Did you wear different clothes when you were doing your
12 work as opposed to when you were doing other things?

13 A. Yes, sir.

14 Q. And what kind of -- say, when you went to these
15 meetings or classes, what kind of clothes did you wear?

16 A. In indoctrination meetings we wore a suit. During
17 classes we were required to wear khaki slacks, a button down
18 dress shirt.

19 Q. And what did you wear when you were doing work?

20 A. We wore -- I was required to wear a uniform of yellow
21 T-shirt, work belt, jeans, and steel toe work boots.

22 Q. Okay. In this Exhibit 10, what were you asking for in
23 that letter?

24 A. The work boots.

25 Q. How about No. 12, Exhibit No. 12, can you take a look

1 at that.

2 MR. OLIVER: What's the date, Mr. Stilley?

3 MR. STILLEY: It's 10/16/01.

4 Q. Do you see anything in that letter related -- that was
5 related to your work?

6 A. Did you say this one was dated 10/16/01?

7 Q. I think it's ten -- maybe it's 10/26?

8 A. 10/26.

9 Q. Look down about line 5.

10 A. Yes, sir.

11 Q. And do you see anything there that related to your work
12 duties?

13 A. Yes, sir. I was in need of work jeans and work shirt
14 and work boots.

15 Q. Take a look at Exhibit No. 14. On the second line do
16 you see anything in this letter that relates to the work that
17 you did at Mountain Park or Palm Lane?

18 A. Yes, sir, I was still asking for work boots and work
19 shirts, yellow T-shirts.

20 Q. And why did you ask again?

21 A. Because as I say, earlier with the -- I was required --
22 with the classes I was required to wear khaki slacks and a
23 button down dress shirt where I performed my chores in those
24 clothes. Now, the task I said before as far as digging the
25 ponds, repairing the cattle fence, that nature I was required

1 to wear the work uniform.

2 Q. Okay. But it sounds from these letters, it sounds like
3 you asked for these items more than once; is that correct?

4 A. Yes, sir. Yes, sir.

5 Q. And why did you have to ask more than once?

6 A. Because I was told that I had to have them. I was
7 having other students were having to provide them for me.

8 Q. And I don't want to go through all these letters one by
9 one, it would take just a whole lot of time, but do these
10 other letters contain similar items?

11 A. Yes, sir.

12 MR. STILLEY: Pass the witness.

13 THE COURT: Cross-examination.

14 MR. BRIGGS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BRIGGS:

17 Q. Good morning, Mr. Blair.

18 A. Good morning, sir.

19 Q. Mr. Blair, did you understand that your -- strike that.
20 You understood that your parents wanted to send you to
21 Mountain Park; is that correct?

22 A. No, sir.

23 Q. Do you remember having your deposition taken, sir?

24 A. Yes, sir.

25 MR. BRIGGS: May I approach the witness, Your Honor?

1 THE COURT: Go ahead.

2 Q. Mr. Blair, you had your deposition taken on June 4,
3 2003; is that correct?

4 A. Yes, sir.

5 MR. BRIGGS: My apologies, Your Honor. May I have a
6 moment?

7 THE COURT: Ladies and gentlemen of the jury, why
8 don't we just take a morning recess at this time. Recall the
9 admonition. Be prepared to return to the courtroom at --
10 return to your jury room at 10:15, okay.

11 (Court in recess from 9:54 a.m. until 10:22 a.m.)

12 BY MR. BRIGGS:

13 Q. Mr. Blair, prior to the break I handed you a copy of
14 your deposition from June 4, 2003. Do you have that still in
15 front of you?

16 A. Yes, sir.

17 Q. Okay. And the question I'd asked you was whether you
18 understood that your father wanted to send you to Mountain
19 Park; is that correct?

20 A. Yes, sir.

21 Q. And your answer was no, right?

22 A. Yes, sir.

23 Q. Turning to your deposition page 20. Page 20, line 22.
24 I'll go ahead and read it for you.

25 "QUESTION: Do you know if your father, Ron Blair,

1 asked that you be sent to Mountain Park?

2 "ANSWER: Yes, sir.

3 "QUESTION: And was it his wish that you go to
4 Mountain Park?

5 "ANSWER: Yes, sir."

6 That was continuing on to page 21. Did I read that
7 correctly, Mr. Blair?

8 A. I'm not sure where you're at here.

9 Q. Okay. On page 20, line 22. So toward the bottom.

10 A. Yes, sir.

11 Q. Okay. I'll read it once again.

12 "QUESTION: Do you know if your father, Ron Blair,
13 asked that you be sent to Mountain Park?

14 "ANSWER: Yes, sir.

15 "QUESTION: And was it his wish that you go to
16 Mountain Park?" That's continuing on to the next page.

17 "ANSWER: Yes, sir."

18 Do you see that?

19 A. Yes.

20 Q. Did I read it correctly?

21 A. Yes, sir.

22 Q. Okay. Does that refresh your recollection then,
23 Mr. Blair, did your father indeed wish you go to Mountain
24 Park?

25 A. When I answered those questions, that was before his

1 deposition testimony was taken. And I believe that --

2 Q. Actually, well, Mr. Blair, did you understand that he
3 be sent to Mountain Park. Or excuse me?

4 A. That he be sent?

5 Q. Strike that. Did you understand he wish that you be
6 sent to Mountain Park?

7 A. No, sir, not at this time.

8 Q. And you're saying because of his deposition testimony
9 that that changes your opinion?

10 A. Yes, sir. For reasons that because of the Court's
11 order, the judge's order I can't go into.

12 Q. Do you know is his deposition is in evidence in this
13 case?

14 A. Not that I know of, sir.

15 Q. Okay. Very well. At the time your deposition was
16 taken, did you have that understanding?

17 A. Yes, sir.

18 Q. Okay. Very good. Mr. Blair, I believe it was your
19 testimony that you arrived at Mountain Park on October 24,
20 2001?

21 A. Yes, sir.

22 Q. When Mr. Stilley was asking you some questions
23 yesterday, you said you arrived in Mountain Park in
24 handcuffs; is that correct?

25 A. Yes, sir.

1 Q. Did Mountain Park put you in handcuffs?

2 A. No, sir.

3 Q. Did Mountain Park bring you to the campus?

4 A. No, sir.

5 Q. So your parents, were they the ones that put you in
6 handcuffs?

7 A. No, sir.

8 Q. Did your parents bring you to Mountain Park campus?

9 A. No, sir.

10 Q. Very good. Continuing on with that testimony,
11 Mr. Blair, do you recall with respect to this alleged
12 battery, going to that claim, that Mr. Gerhardt, Bo Gerhardt,
13 shoved you into a sink. Yesterday you told us that it didn't
14 leave a mark on your body, correct?

15 A. Yes, sir, that I recall.

16 Q. Okay. And indeed it didn't draw blood either; is that
17 correct?

18 A. Yes, sir.

19 Q. This morning on direct Mr. Stilley had also asked you
20 with respect to where you were placed as far as your
21 educational training at Mountain Park and Palm Lane. And I
22 believe your response was that you were put into fifth grade
23 work; is that correct?

24 A. Yes, sir.

25 Q. When you first got to Mountain Park, did you take a

1 diagnostic test?

2 A. Yes, sir.

3 Q. Okay. And after that you began doing work in the
4 curriculum that Mountain Park uses and Palm Lane uses,
5 correct?

6 A. Yes, sir.

7 Q. Referring you to Plaintiff's Exhibit 10, Mr. Blair.
8 While you were at Mountain Park and Palm Lane, you wrote and
9 sent letters to your parents; is that correct?

10 A. Yes, sir.

11 Q. In fact, you've offered 28 letters that you wrote to
12 your parents while you were enrolled at Palm Lane and
13 Mountain Park in this trial; is that correct?

14 A. I'm not exactly sure on the number 28, but I have
15 offered some.

16 Q. Okay. Is it more than 20?

17 A. I'm not sure.

18 Q. Why don't you take a moment and count for us then. The
19 first one is Exhibit 10 if that helps you. And the last one
20 is your Exhibit 38.

21 A. Yes, sir.

22 Q. So it's correct there are about 28 letters?

23 A. Yes, sir.

24 Q. The first letter, Plaintiff's Exhibit 10 taking a look
25 at, isn't it correct that you wrote this letter to your

1 parents?

2 A. Yes, sir.

3 Q. Okay. And if I can find it. Referring to what I've
4 just highlighted on the screen, Mr. Blair, and now I'll read
5 that. "I'm having to redo my junior and senior year." Do
6 you see that there?

7 A. Yes, sir.

8 Q. Did I read that accurately?

9 A. Yes, sir.

10 Q. Okay. So isn't the truth of the matter that while you
11 were at Mountain Park and Palm Lane, in fact, you were
12 redoing your junior and senior year, you told your parents
13 that, correct?

14 A. Yes, sir.

15 Q. Okay. And junior/senior year in high school is not
16 fifth grade work, correct?

17 A. Well, it depends on what system of learning you're
18 using. See, they had an age based program which you can tell
19 by the pace that I was using it was 10/56 which the 56 would
20 indicate fifth grade level work.

21 Q. All right. But respect to this, you were placed
22 basically in your junior year, that's what you told your
23 parents, correct?

24 A. Yes, sir.

25 Q. Mr. Blair, taking a look at Plaintiff's Exhibit 10,

1 this letter. If you want you can take a moment and read it.
2 Why don't we start off with the date in the upper right-hand
3 side. And it appears to say 10/9/01; is that correct?

4 A. Yes, sir.

5 Q. Mr. Blair, in fact, did you write this letter on
6 10/9/01?

7 A. Yes, sir.

8 Q. Were you enrolled at Mountain Park or Palm Lane at the
9 time you wrote this letter?

10 A. No, sir.

11 Q. Okay.

12 A. So that must have been 11/9/01. I might have gotten
13 the months mixed up.

14 Q. So this letter was likely written on November 9, 2001?

15 A. I can only guess.

16 Q. When did you leave Mountain Park and go to Palm Lane?
17 Was that around November 9th?

18 A. Yes, sir.

19 Q. Why don't we refer you then to the second sentence of
20 the letter at the top. And I'll read it. "So I'm leaving
21 for Florida tomorrow morning. How are Timmy and Chris?"

22 A. Yes, sir.

23 Q. Did I read that accurately?

24 A. Yes, sir.

25 Q. Okay. Based upon the statement that you made to your

1 parents that you were leaving for Florida tomorrow, would it
2 be fair to say that this letter was written on or about
3 November 9, 2001?

4 A. Yes, sir.

5 Q. All right. Taking a look at this letter, Mr. Blair, do
6 you make any reference in there to Bo Gerhardt committing a
7 battery against you or slamming you or shoving you against a
8 bathroom sink or wall?

9 A. No, sir.

10 Q. Okay. Actually in taking a look at Plaintiff's
11 Exhibit 10 as well, Mr. Blair, isn't it true that in this
12 letter you don't make any reference to your parents of having
13 to do work at Mountain Park?

14 A. Absolutely not.

15 Q. Moving on to Plaintiff's Exhibit 11, Mr. Blair. Now,
16 the date at the letter on the top says 10/9/01. Mr. Blair,
17 did you write this letter while you were enrolled at Mountain
18 Park or Palm Lane?

19 A. Yes, sir. But, again, the date must be wrong. The
20 month may be wrong. 11/9 probably.

21 Q. So it's your understanding that this -- that, in fact,
22 you wrote this letter on November 19th, 2001?

23 A. Yes, sir.

24 Q. Where were you at that time, in Palm Lane or Mountain
25 Park?

1 A. Palm Lane.

2 Q. Mr. Blair, taking a look at this letter, isn't it the
3 truth that in this letter to your parents that you didn't
4 mention anything about Bo Gerhardt shoving you into a sink or
5 wall?

6 A. Absolutely.

7 Q. And isn't it also true that in this letter you don't
8 make any reference to work to your parents?

9 A. Absolutely.

10 Q. Going on to the next letter, Plaintiff's Exhibit 12.
11 Once again the date on this letter, it says 10/26/01. And,
12 Mr. Blair, taking a look at this letter, did you write this
13 while you were enrolled at Palm Lane?

14 A. Give me a second to read through this to make sure. I
15 don't see any indication that it would indicate that was
16 written on November. It could have been written on October
17 like it was dated.

18 Q. Okay, fair enough. Mr. Blair, isn't it the truth that
19 in this letter that you wrote to your parents that you didn't
20 make any mention of Bo Gerhardt shoving you into a sink or a
21 wall?

22 A. Absolutely not.

23 Q. Okay. In fact, Mr. Blair, we could go through every
24 other letter that you have offered into evidence in this
25 trial, over 20 letters. In every single one of those letters

1 that you included, isn't it true you didn't make any
2 reference of Bo Gerhardt shoving you into a wall?

3 A. I would never make a reference with these letters being
4 monitored and risk the punishment.

5 MR. BRIGGS: Your Honor, I'd instruct the witness
6 not to -- I'd instruct the Court to instruct the jury to
7 disregard the answer and move to strike the remaining portion
8 of the answer.

9 THE COURT: The jury is so instructed.

10 BY MR. BRIGGS:

11 Q. Now, if we could turn to Exhibit 26, Mr. Blair.

12 THE COURT: Is that Exhibit 26?

13 MR. BRIGGS: Yes, Your Honor.

14 Q. Mr. Blair, did you write this letter?

15 A. Yes, sir.

16 Q. And what's the date on it?

17 A. January 18th, 2002.

18 Q. Okay. At that point in time you were down at Palm
19 Lane?

20 A. Yes, sir.

21 Q. Okay. In the letter once again, and I'll read it, you
22 state to your parents, "I'm having to take my junior year
23 over again." Is that correct?

24 A. Yes, sir.

25 Q. All right. Very good. You didn't make any reference

1 to doing fifth grade work to your parents in any letter that
2 you wrote; isn't that correct, Mr. Blair?

3 A. Yes, sir.

4 Q. Now, turning to Exhibit 30. Mr. Blair, was this
5 written in or around February 2002?

6 A. Yes, sir.

7 Q. And I've highlighted some text in the middle of the
8 letter and I'll go ahead and read it. I've learned to weld,
9 to fix a toilet completely, use a belt sander. Do you see
10 that there?

11 A. Yes, sir.

12 Q. Did I read the handwriting correctly?

13 A. Yes, sir.

14 Q. Now, learning these vocational skills, learning to
15 weld, learning to fix a toilet, are those some of the work
16 chores or -- strike that. Were some of the work things that
17 you did while you were at Palm Lane?

18 A. Yes, sir.

19 Q. Okay. And you're asking this jury to pay you for
20 learning these skills, correct?

21 A. Absolutely.

22 Q. Okay. And Exhibit 31. Mr. Blair, on direct you said
23 that it took about a week to dig the pond. And then you said
24 that it wasn't completed when you left Palm Lane, correct?

25 A. Yes, sir.

1 Q. Okay. Looking at this exhibit, it is dated February 8,
2 2002. And the second sentence or third sentence says, "Well,
3 right now we're working on digging a pond." Do you see that
4 there?

5 A. Yes, sir.

6 Q. Okay. You said the pond took about a week. And yet it
7 wasn't finished when you left. And I thought it was your
8 testimony that you left Palm Lane in March 15, 2002. Isn't
9 that right?

10 A. Yes, sir.

11 Q. Okay. Mr. Blair, well, then if it only took a week, it
12 should have been finished, correct?

13 A. Well, we were in Florida and it rains a lot so
14 you're -- we're not going to dig out in the mud when it's
15 raining, so we would postpone. But it was about a week's
16 worth of work that I had labored on the pond.

17 Q. You said it was raining a lot but that you were working
18 outside in the sun every day, and that that's the basis for
19 your Fair Labor Standards Act claim, correct?

20 A. When I worked on the pastures.

21 Q. Okay. And otherwise when you worked outside, did you
22 only work outside when it was nice out?

23 A. Not all the time. We would be -- there's an overhang
24 at Palm Lane where we'd work underneath when it was raining.
25 But the pond was located out in the pasture, so -- and also

1 it was in Florida so you really can't -- I mean, it will rain
2 wherever, so.

3 Q. Okay. And this was in the winter time in Florida,
4 right?

5 A. Yes, sir.

6 Q. All right. Going on spring. You never worked in
7 Florida in the summertime?

8 A. Right.

9 Q. Now, in calculating the hours that you said you worked
10 while you were at Mountain Park and Palm Lane, I just want to
11 get this correct. You said that there is no way to give
12 specific dates and times that you actually were doing
13 specific tasks or actually working; is that right?

14 A. Right.

15 Q. Okay. So you can't tell us exactly what hours you were
16 working on a particular day?

17 A. Well, I can tell you for sure as far as the tasks I
18 performed, the labor I performed as far as like I previously
19 stated on the jobs like digging the pond and things of that
20 nature, that would be at least two and a half, three hours
21 per day, that's for sure, I can know for sure.

22 Q. Well, that really wasn't an answer to my question. I
23 said that you really can't tell us the specific hours you
24 worked on specific days. And that's what I asked.

25 A. Yes, sir, that's correct, I can't.

1 Q. Okay.

2 A. There were no records that we kept or anything like
3 that.

4 Q. You said in a typical day at Mountain Park or Palm Lane
5 that you got up and then you said a prayer; is that right?

6 A. Yes, sir, I was forced to do that.

7 Q. Okay. Do you understand, Mr. Blair, that when your
8 father enrolled you at Mountain Park that he understood
9 Mountain Park had a religious -- religion based curriculum?

10 A. I believe so.

11 Q. Okay. After you said your prayers, you said that you
12 did chores, correct?

13 A. Yes, sir.

14 Q. And you did chores in and around the dorm area cleaning
15 up the common areas so to speak?

16 A. Yes, sir, laundry, things of that nature.

17 Q. That would be making your bed, correct?

18 A. Yes, sir.

19 Q. Sweeping the floor?

20 A. Yes, sir.

21 Q. You said just then doing laundry?

22 A. Yes, sir.

23 Q. And you're not asking this jury to pay you for those
24 tasks?

25 A. Absolutely not.

1 Q. Mr. Blair, these indoctrination sessions that you
2 testified about, you studied bible scripture during those
3 indoctrination sessions, correct?

4 A. Their version of the bible, yes, sir.

5 Q. And their version of the bible is the King James
6 version of the bible?

7 A. Yes, sir.

8 Q. Okay. Did you talk about the scripture that you read?

9 A. Yes, sir. Excuse me, what was your exact question?

10 Q. Did you talk about the scripture that you read?

11 A. As in me personally?

12 Q. As in somebody within the group.

13 A. Someone in the group spoke on their interpretation of
14 it.

15 Q. Thank you. While you were at Mountain Park you said
16 that after lunch you would do chores, correct, you'd get put
17 into your work clothes and you'd go out and do work in the
18 yard?

19 A. Yes, sir.

20 Q. Would that include mowing the yard?

21 A. No, sir, I was -- we weren't mowing the yards at the
22 time, it was winter.

23 Q. Okay. Would you be raking leaves?

24 A. Yes, sir.

25 Q. Did you haul firewood?

1 A. Yes, sir.

2 Q. Did you clear brush?

3 A. Yes, sir.

4 Q. Were there -- strike that. On some afternoons during
5 the week you would play games or sports; is that correct?

6 A. Just once at Mountain Park anyway.

7 Q. Would that happen on occasion at Palm Lane?

8 A. Yes, sir.

9 Q. So you weren't doing these outdoor work activities
10 every day, correct?

11 A. Correct.

12 Q. These outdoor activities that you did including the
13 hauling of firewood, raking leaves, clearing brush, were
14 those done in teams?

15 A. At Mountain Park they were.

16 Q. Now, at Palm Lane did you also do afternoon tasks, job
17 tasks or work tasks?

18 A. Yes, sir.

19 Q. Okay. But there were some afternoons when you would
20 play games?

21 A. Yes, sir.

22 Q. On days when you happened to be doing the outdoor
23 tasks, would that include taking out the trash?

24 A. Yes, sir.

25 Q. And cleaning cars?

1 A. The -- yes, sir.

2 Q. And just so we make it clear, those are the cars that
3 were on campus at Palm Lane, with the possible exception of
4 doing Mr. and Mrs. Wills' car?

5 A. With the other employees' staff vehicles also.

6 Q. Would you mow the lawn?

7 A. Yes, sir.

8 Q. And would you clear brush?

9 A. Yes, sir.

10 Q. You said that you also painted some fences; is that
11 right?

12 A. Yes, sir.

13 Q. And you're asking the jury to pay you for those outdoor
14 tasks that you performed?

15 A. Yes, sir.

16 Q. Now, you said something about there being cattle at
17 Palm Lane. As you sit here today you don't know whether Palm
18 Lane owned any cattle, correct?

19 A. In Ms. Wills' other testimony she stated that they do
20 not own the cattle, so no.

21 Q. So they don't own the cattle. If cattle got sick, who
22 would take care of the cattle?

23 A. We would immediately. Then they would call the owner.

24 Q. Okay. And who is the owner?

25 A. I only knew the individual as a man named Tousiaant.

1 Q. Now, going back to this pond that you said that you
2 dug. You said that actually one of the staff members was
3 using a small bulldozer or front end loader, correct?

4 A. Yes, sir.

5 Q. Okay. And you among the other students, male students
6 were dressing the edges of the pond?

7 A. Yes, sir.

8 Q. And you said that you did that for a week?

9 A. Yes, sir.

10 Q. With respect to the pond, were you told by the staff
11 member why it was being dug?

12 A. For the cows.

13 Q. Who told you that?

14 A. Robert Kennedy.

15 Q. Now, Mr. Blair, are you making a claim for on call work
16 in connection with this lawsuit?

17 A. Yes, sir.

18 Q. You are. Did you plead that?

19 A. No, sir.

20 Q. Okay. Do you know if your lawyer pled that on your
21 behalf?

22 MR. STILLEY: Objection on the grounds this witness
23 doesn't have knowledge of that, of technical legal matters.

24 MR. BRIGGS: Well, actually if he has knowledge,
25 i.e., he verified the petition, Your Honor.

1 MR. STILLEY: He verified the facts.

2 MR. BRIGGS: Well, that would be a fact.

3 THE COURT: Fine. Go ahead.

4 BY MR. BRIGGS:

5 Q. Do you know if he did? Do you know if your lawyer pled
6 that on your behalf?

7 A. I don't have that knowledge.

8 Q. Mr. Blair, were you on orientation the entire time you
9 were at Mountain Park and Palm Lane?

10 A. Yes, sir.

11 Q. You understood orientation was for new students,
12 correct?

13 A. Yes, sir.

14 Q. And a more senior or not necessarily an aged senior but
15 a more experienced student would act as an orientation guide
16 and be within arms length distance of a new student, correct?

17 A. The way I understood it, the way they pick and choose.

18 Q. So whoever was chosen to act as an orientation guide?

19 A. Yes, sir.

20 Q. Typically that was a more senior student?

21 A. No, sir, my orientation guide was 14 years old.

22 Q. Well, when I said more senior, someone who had more
23 experience at Mountain Park or Palm Lane?

24 A. By a month.

25 Q. Do you understand that student would not come off

1 orientation until they had demonstrated they could be
2 trusted?

3 A. Yes, sir.

4 Q. Since you did not come off orientation the entire time
5 that you were at Mountain Park and Palm Lane, then it would
6 be fair to say that Mountain Park and Palm Lane staff didn't
7 feel that you could be trusted?

8 A. No, sir.

9 Q. Why isn't that a fair statement based upon what you
10 just testified to?

11 A. Because, well, me and the other students also raised
12 the question with Andrew Parrish. I felt I should come off
13 orientation, and that's about as far as that went.

14 Q. And a more senior staff wouldn't permit that to happen?

15 A. I don't have knowledge of any of that.

16 Q. Mr. Blair, with respect to the security guard issue,
17 you said you had to watch out for students to make sure they
18 didn't escape, correct?

19 A. Yes, sir.

20 Q. With respect to your claim that you were a security
21 guard 24 hours a day, if you were on orientation with a more
22 senior student watching you, then how could you be watching
23 for other students?

24 A. It would be -- no student is allowed in the room by
25 himself. See, there's always going to be other students

1 around you.

2 Q. Well, of course. So the mere fact that no students are
3 permitted to be in a room by themselves, that therefore
4 renders you a security guard, that's what you're claiming?

5 A. Yes, sir.

6 Q. Okay. So the mere fact that you couldn't be in a room
7 by yourself is your basis for claiming that you're a security
8 guard, that's what you just testified to?

9 A. What if my orientation guide decided he was going to
10 run off. I was to report any --

11 Q. So you were to report if another student ran off?

12 A. No, you didn't let me finish my answer. I was to
13 report if he discussed any --

14 Q. Well, that's what you had just said. So --

15 MR. STILLEY: Objection. I request the witness be
16 allowed to answer the question completely before the next
17 question be asked.

18 THE COURT: Reask your question.

19 BY MR. BRIGGS:

20 Q. Mr. Blair, the entire time you were at Mountain Park
21 and Palm Lane you were always in the presence of an
22 orientation guide or staff member?

23 A. No, sir.

24 Q. When were you not?

25 A. The day that I ran away on March 15th, 2002.

1 Q. So the first opportunity that you had not to be under
2 the eye of an orientation guide or staff member you ran away?

3 A. Yes, sir.

4 Q. It's kind of ironic then that somebody who is supposed
5 to be a security guard would run away the first chance they
6 had, isn't it?

7 A. I was an involuntary security guard, sir.

8 Q. Mr. Blair, while you were at Mountain Park did you ever
9 do the outdoor tasks, the clearing brush, raking leaves for
10 somebody in the town of Patterson other than the people
11 living at Mountain Park?

12 A. No, sir.

13 Q. Mr. Blair, while you were at Mountain Park and Palm
14 Lane did you ever make any goods that were sold by Mountain
15 Park or Palm Lane?

16 A. No, sir.

17 MR. BRIGGS: A moment while I may confer, Your
18 Honor?

19 THE COURT: Go right ahead.

20 MR. BRIGGS: Thank you. That's all I have at this
21 time, Your Honor. May I approach the witness to remove the
22 deposition?

23 THE COURT: Absolutely. Mr. Stilley.

24 REDIRECT EXAMINATION

25 BY MR. STILLEY:

1 Q. Mr. Blair, were your letters read by other persons
2 before they were mailed to your parents?

3 A. Yes, sir.

4 MR. BRIGGS: Objection, Your Honor, move to strike.

5 THE COURT: Overruled.

6 BY MR. STILLEY:

7 Q. And do you know who read those letters?

8 A. The dorm supervisor for sure. Also some of the letters
9 I see that Sam Gerhardt has read those and written in
10 portions.

11 Q. Did you have any reason not to say certain things in
12 those letters?

13 A. Absolutely.

14 Q. And how did you come to have knowledge that there were
15 certain things you shouldn't say?

16 A. I had been punished before for even the things I had
17 already written as far as my beliefs and my parents' beliefs.

18 Q. Why didn't you say in those letters that the treatment
19 you were getting at Mountain Park and Palm Lane would cause
20 you to have to repeat your junior and senior years?

21 A. Excuse me, could you ask that?

22 Q. Why did you say in those letters that you have to
23 repeat your junior and senior years?

24 A. Because they -- Mountain Park and Palm Lane didn't know
25 where to place me so they just basically picked whatever they

1 thought was easy for them. They didn't want to get records
2 from my previous school, the one I graduated from. They
3 didn't try to do any of that.

4 Q. What location were you at when you left the supervision
5 of Palm Lane?

6 A. At a Home Depot in Port Charlotte, Florida, I believe.
7 It may have been Arcadia, Florida, but around that region.

8 Q. Okay. Moving on to a different issue here. You didn't
9 keep a log of your hours that you worked, did you?

10 A. No, sir.

11 Q. Why not?

12 A. I wasn't allowed to.

13 Q. What's your basis of personal knowledge about that?

14 A. You're not allowed to write things that they don't want
15 you to write down.

16 Q. But you didn't have a copy of the written rules,
17 though, did you?

18 A. No, sir.

19 Q. How did you find out that that was a rule?

20 A. Drew Parrish told me.

21 Q. And why did he come to have occasion to tell you?

22 A. Because I had marked in my bible days that I had
23 written down for memory verses, stuff like that. They
24 were -- there were only little marks so it couldn't be
25 distinguished as. However, I guess it could have been used

1 for whatever and he did not like that, so.

2 Q. How did he find out that you made marks in your bible?

3 A. He just inspected my bible. They inspect all the
4 bibles.

5 Q. How frequently?

6 A. Just wherever they feel like it.

7 Q. Now, on cross-examination you said something about King
8 James bible. Was just any King James bible okay?

9 A. No, sir.

10 MR. BRIGGS: Objection, Your Honor, how is this
11 relevant?

12 MR. STILLEY: Your Honor, he asked --

13 THE COURT: Well, we've gone enough into that.

14 MR. STILLEY: Can I have one more question?

15 THE COURT: No.

16 MR. STILLEY: Thank you, Judge. Pass the witness.

17 THE COURT: Anything else, Mr. Briggs?

18 MR. BRIGGS: Nothing further, Your Honor.

19 THE COURT: Very well. Mr. Blair, you may step
20 down. Call your next witness.

21 MR. STILLEY: Your Honor, can I have just about one
22 minute to talk to them or less?

23 THE COURT: One minute.

24 MR. STILLEY: Just a very little bit to talk to my
25 client?

1 THE COURT: Fine.

2 MR. STILLEY: Thank you, Judge. Plaintiff rests.

3 THE COURT: Come on up.

4 (The following proceedings were held at the bench
5 and outside the hearing of the jury:)

6 MR. OLIVER: I need to get it retyped.

7 THE COURT: No. Go ahead.

8 MR. OLIVER: Well, Palm Lane and Mountain Park and
9 Betty Wills and Bob Wills and Sam Gerhardt on the one hand
10 and Drew Parrish, Robert Kennedy, and Bo, Julie, and Robert
11 O'Brient as individuals move for directed verdict on the Fair
12 Labor Standards Act case for -- there are a lot of reasons.

13 THE COURT: Well, we're going to -- I think this may
14 take a little time.

15 MR. OLIVER: I agree with you.

16 THE COURT: Why don't I let the jury go out.

17 MR. OLIVER: Fine.

18 (The following proceedings continued within the
19 hearing of the jury:)

20 THE COURT: It's become clear this is going to take
21 a little time, so why should you sit here. Why don't you all
22 take a break. You see what I'm saying.

23 Ladies and gentlemen of the jury, we're going to
24 take a recess as far as you are concerned. Why don't you be
25 prepared to return to your jury room at 20 after 11. Recall

1 the admonition.

2 (The following proceedings were held outside the
3 hearing of the jury:)

4 THE COURT: Okay. Defendants have a motion for a
5 directed verdict at the close of all -- at the close of
6 rather the plaintiff's case. Go ahead, Mr. Oliver.

7 MR. OLIVER: Thank you, Your Honor. First, Your
8 Honor, on behalf of the individual defendants Drew Parrish,
9 Robert Kennedy, Robert O'Brient, Julie Gerhardt, Bo Gerhardt,
10 and Deborah Gerhardt, the simplest answer or the simplest
11 reason that these defendants are entitled to a directed
12 verdict on the Fair Labor Standards Act is that under no
13 circumstances are they shown to be employers. There's no
14 evidence that any of those individuals had any decision
15 making capacity at all. In fact, there's absolutely no
16 evidence that Drew Parrish, Robert Kennedy, Robert O'Brient,
17 Julie Gerhardt, Bo Gerhardt, or Deborah Gerhardt ever made a
18 decision at all in this case. There's a total absence of
19 evidence.

20 Now, to be an employer you have to suffer or permit
21 somebody to work in traditional terms. And the test of
22 whether or not an individual is an employer is a test which
23 specifically in the Eighth Circuit under Wirts and other
24 cases require the Court to look at whether or not the
25 individual has the ability to hire, fire, and dictate the

1 manner -- set salaries and dictate the manner and method of
2 work. So as to these individuals, there's a total absence of
3 that. They are not be employers under the Act.

4 The second, Your Honor, with respect to those
5 defendants and to the defendants Palm Lane, Mountain Park,
6 Bob Wills, Betty Wills, and Sam Gerhardt, the other
7 defendants, the reality is that the evidence in this case so
8 far demonstrates as a matter of law that the activities that
9 the plaintiff complains of are activities which are part of
10 the integrated process or the integrated system into which
11 his parents voluntarily and as we know in fact sent him
12 voluntarily as the alternative to him going to juvenile
13 detention center, which is what we know in fact although not
14 in the evidence.

15 This court said in its memorandum opinion that the
16 issue was whether or not the plaintiff was engaged in school
17 in which the work was part of the school or on the other hand
18 whether the plaintiff was engaged in work which was in
19 furtherance of, quote, business enterprises.

20 It is clear and there's no evidence to the contrary
21 that this individual is not an employee in the sense of the
22 Fair Labor Standards Act. An employee under the Fair Labor
23 Standards Act is a person whose economic livelihood depends
24 upon the economic viability of the, quote, employer's, closed
25 quote, business. Which is to say you have to depend -- your

1 livelihood, your economic livelihood depends on the work
2 given to you by this corporation that's known as your
3 employer.

4 That work has to further a business enterprise. It
5 either has to produce goods in commerce or be involved in
6 something that produces goods in commerce or is involved in
7 communication in commerce. And this boy was sent
8 involuntarily to a school which includes three or four hours
9 of work or sports every afternoon as a part of its regimen, a
10 strict regimen, integrated regimen. And 100 percent of the
11 evidence is then that he is not dependent economically on the
12 success or failure of Palm Lane, he is not an employee within
13 the meaning of the Act. Neither are the defendants employers
14 within the meaning of the Act as they relate to -- as they
15 relate to Jordan Blair.

16 They are employers as to other staff members, both
17 in and out staff, but they are not employers of the students
18 because the students' work is a part of the training that
19 they are getting as troubled youth as a part of their effort
20 to restore these children, young people to a meaningful life.

21 There are other sufficient reasons to sustain the
22 motion for directed verdict on the Fair Labor Standards Act.
23 I mean, they have a burden of proving a work week, week by
24 week basis, the exact number of hours. That's part of the
25 plaintiff's burden of proof. They haven't even tried to do

1 that. They admitted that they can't. So, I mean, they don't
2 qualify that way.

3 They haven't established that anything Jordan Blair
4 did had an impact on interstate commerce. The opening
5 criteria for application is that the labor had a significant
6 impact. This is just like the cases that Your Honor cited in
7 his memoranda where people go to school, they are at that
8 school. It's like the College of the Ozarks. I mean, it's
9 just exactly what's over here at Point Ozark. Part of the
10 plan, part of your education is to work. And why do you
11 work? You work to learn discipline. You work to learn --
12 you work to learn discipline. You work to learn
13 self-respect. And you get vocational skills. The key in
14 this case in terms of that may be what Jordan Blair says,
15 that he wants to be paid for learning how to weld and how to
16 use a belt sander.

17 Judge, every public school in the United States is
18 required to teach that to boys or that kind of thing to boys
19 in shop. I mean, you don't get paid for learning vocational
20 skills.

21 This is simply not a Fair Labor Standards Act case.
22 We don't have an employer and we don't have any employee.
23 And the defendants are all entitled to a directed verdict,
24 most particularly or most clearly the individuals as to whom
25 there is absolutely no testimony. Thank you.

1 THE COURT: Mr. Stilley, I am inclined to agree with
2 all of what Mr. Oliver has said. Now, you ready to change my
3 mind?

4 MR. STILLEY: Yes, Judge, I'm ready to change your
5 mind.

6 THE COURT: Okay. Go for it, change my mind.

7 MR. STILLEY: Okay. Let's start with the first one.
8 The testimony shows that everyone, part of their duties was
9 to force everyone else to comply.

10 THE COURT: Say that again.

11 MR. STILLEY: Part of their duties was everyone had
12 the duty to force everyone else to comply. If anyone was to
13 cause any trouble for any staff member, they had to basically
14 attack that person.

15 THE COURT: Well, you know, see, that's kind of
16 stretching making somebody say they are a security guard.
17 You know, that's kind of stretching it. You said he worked
18 as a security guard, and the testimony came out that's
19 because he had to tell on everybody if they tried to leave
20 the premises, they had to restrain them or if they were
21 breaking the rules tell.

22 MR. STILLEY: Well, he also had to do physical
23 things. He also had to physically restrain or catch --

24 THE COURT: He said restrain. He basically had to
25 restrain anyone that was leaving the premises or I guess he

1 implied there that if there was an altercation with staff
2 people or someone else of authority, and he had to report any
3 violation of rules. Okay. That made him a security guard as
4 far as you're concerned?

5 MR. STILLEY: That makes him a security guard.
6 Ms. Wills herself testified nobody runs away.

7 THE COURT: Well, he got away.

8 MR. STILLEY: From Lowe's.

9 THE COURT: You have anything else to say about that
10 issue?

11 MR. STILLEY: Yes. Well, now, let's not forget
12 there's two sides to this. I think we just need the jury
13 take and let the jury sort it out.

14 THE COURT: It's basically a legal issue for me,
15 really. It's a legal issue.

16 MR. STILLEY: On what amounts to compensable work?

17 THE COURT: Whether or not someone is an employer or
18 an employee under the Fair Labor Standards Act, that's my
19 call. Now, I maybe would perhaps allow the jury to deal with
20 some things. But right now I don't see that you've made
21 anything, made a case enough for me to submit to the jury.
22 And I want you to tell me what have you shown for me to
23 submit anything to the jury at all?

24 MR. STILLEY: Well, we've shown that they are a
25 school or at least purport to be a school. And the law and

1 Fair Labor Standards Act there is a specific section that
2 says that a school is a covered entity. They have to pay.
3 As I told you earlier, it is a belt and suspenders approach.
4 That is the only reason that --

5 THE COURT: It is a belt -- tell me that, it is a
6 beltless suspender?

7 MR. STILLEY: Belt and suspenders approach. In
8 other words, I'm taking two routes to make sure that one
9 succeeds. I'm showing the interstate commerce only as
10 redundant to the fact that this is a school. This is a
11 school, and the schools are required to pay.

12 THE COURT: Well, I'm not disputing or I don't have
13 a problem, I don't think anyone has a problem that the school
14 is an employer in general. But is it an employer relative to
15 Mr. Blair, and is he an employee? I'm saying specifically
16 him.

17 MR. STILLEY: Right. And we all can see that there
18 is enough evidence that a reasonable jury could find that
19 Mr. Blair was compelled, compelled to do things like digging
20 ponds, painting fences and various other jobs like that
21 outside of chores. I would just very respectfully --

22 THE COURT: That's part of this whole thing about
23 this compelled stuff. His parents sent him there. It was an
24 alternative to where else he was going to go. And he was
25 going to be compelled if he went someplace else. So, I mean,

1 I see this as part of the training and education curriculum
2 of this type of institution.

3 MR. STILLEY: Judge, if that is the case then a
4 person could take an individual in and just simply put him to
5 work because that helps that child learn.

6 THE COURT: We're not looking at that kind -- we're
7 looking at this case here, not some hypothetical case. We're
8 looking at this one.

9 MR. STILLEY: We are looking at this case right
10 here. But we are looking at a case of a kid who was required
11 to do work on the premises and to do work off the premises.
12 And you -- the Fair Labor Standards Act rules and regulations
13 say that you can't even force somebody to attend a meeting
14 without paying them for it. The defendants have advocated
15 the claim that he was kept there pursuant to court order.
16 They can't do that. Ms. Wills herself admitted why do we
17 send him to Florida, because he was going to be able to walk
18 out of there in a week. We know his birthday and we know
19 when he left, it was exactly a week.

20 THE COURT: We have not -- you know, you want to
21 refresh my recollection as to what the court order from
22 Arkansas said in terms of this being an alternative to him
23 being incarcerated by the state?

24 MR. STILLEY: Your Honor, here's -- my position on
25 that is, my position is that the defendants claimed ignorance

1 of it, though they didn't have ignorance, it was fact.

2 THE COURT: You're talking about the fact that he
3 went to Florida. Was there a term? I don't know what term
4 he might have gotten otherwise or what the judge indicated in
5 terms of this being an alternative to him being incarcerated.

6 MR. STILLEY: Here's what the court order said, and
7 we do have a copy of the court order if you want to see it.
8 He said he was sent to Baptist Boys Academy in Missouri to
9 complete inpatient residential treatment. Well, let's stop
10 and think about that. Baptist Boys Academy in Missouri is
11 not Palm Lane. There is no inpatient residential treatment.
12 They themselves in their own book, the testimony from the
13 stand says --

14 THE COURT: Maybe that was a mistake with the court
15 system. But that's kind of indefinite. And how long was he
16 at Mountain Park anyway?

17 MR. STILLEY: He was there from the 24th of October
18 to --

19 THE COURT: How long? Give me a time. 30 days?

20 MR. STILLEY: Three weeks.

21 THE COURT: That's not very long in terms of even
22 what the court order said. How did you describe it,
23 inpatient --

24 MR. STILLEY: Residential treatment.

25 THE COURT: Residential treatment.

1 MR. STILLEY: Correct. It doesn't say that he has
2 to --

3 THE COURT: Every time I send somebody down to
4 Springfield in a criminal case, that takes at least 90 days
5 to get a study. Please.

6 MR. STILLEY: Here's what --

7 THE COURT: I'm saying that you know the three weeks
8 in terms of the court order, that just doesn't wash in terms
9 of the court order, okay. So we're not there. You're
10 talking about them sending him down to Florida because of the
11 age. He's got the competing situation with the parents
12 having enrolled him there.

13 MR. STILLEY: Well, let me make sure the record is
14 very clear on that, the parents did not enroll him in Palm
15 Lane. He was taken to Palm Lane. Allegedly on an oral
16 statement from the parents he was taken to Palm Lane. There
17 were no documents and the court did not order him.

18 THE COURT: The witness indicated that. But now
19 he's somewhat backing off of that in terms of his deposition
20 because of a subsequent deposition he claims of his father.
21 But the testimony that he gave was that his father agreed for
22 him to be there, that was the testimony.

23 MR. STILLEY: Well, the question was about Mountain
24 Park.

25 THE COURT: There is no testimony to the contrary.

1 MR. STILLEY: The question was Mountain Park. Did
2 your father want you to be sent to Mountain Park?

3 THE COURT: Well, we don't have any testimony to the
4 contrary relative to Palm Lane.

5 MR. STILLEY: Well, I mean, they are -- if they want
6 to put on in defense, fine, let them put it on in the
7 defense.

8 THE COURT: I'm tired of beating around the bush
9 with you. What else do you have relative to this that
10 defendants are employers and that he was -- that Mr. Blair is
11 an employee?

12 MR. STILLEY: Okay. Let me just hit the highlights
13 here. The defendants themselves including Ms. Wills did not
14 believe that they had a right to detain him because Ms. Wills
15 herself said we sent him to Florida.

16 THE COURT: Are you talking about false imprisonment
17 or are you talking about employee/employer relationship?

18 MR. STILLEY: I'm trying to talk about wages, but we
19 got a problem here when I try to explain the work, you say,
20 well, he was supposed to work. And then I say, well, he was
21 held there without legal authority and without anything in
22 writing from his parents. And then we say is that a false
23 imprisonment claim? No, it's not a false imprisonment claim,
24 that's something that's already -- we've already been down
25 that road and we've already lost that claim. That claim is

1 out.

2 But what I'm establishing, that he was in Palm Lane
3 for a number of months and forced to work with no legal
4 authority whatever. And under state law you can't just take
5 somebody's kid just because they allegedly orally tell you to
6 take that kid, and you just have --

7 THE COURT: That doesn't seem to go to the issue of
8 employer/employee relationship. And you know from the
9 letters that you have here in evidence from him to his
10 parents, it didn't seem like -- that there was any protest
11 other than on his part in the letters talking about I'm going
12 to be a good person, I changed and this stuff. There's no
13 indication that his parents were opposed to this. And so,
14 you know, that is part of that false imprisonment claim.
15 We're trying to get to employee/employer relationship.

16 MR. STILLEY: His letters were read. He could be
17 punished.

18 THE COURT: Well, please. Employer/employee
19 relationship. Forget the letters.

20 MR. STILLEY: Okay. When we get to the employer/
21 employee relationship question, what we've got, and all we
22 have to show is that he worked for this person, even if --

23 THE COURT: The question is really was it part of
24 the educational curriculum or was it, you know, was it a work
25 situation as opposed to a curriculum student situation?

1 MR. STILLEY: Well, we've got enough facts that it's
2 a submissible case to the jury that you could just say direct
3 a verdict to the jury. See, he had to put on work clothes
4 totally different from the uniform that he had for his
5 indoctrination meetings and his so-called classes.

6 THE COURT: Let's face it, this is an alternative
7 school.

8 MR. STILLEY: Well, then we're assuming this is a
9 bad kid that actually needed to be there.

10 THE COURT: Assuming?

11 MR. STILLEY: That's what we're doing.

12 THE COURT: You're the one that had him talk about
13 being brought there in handcuffs. You thought that that
14 would show that somebody else was bad. That was telling
15 something on him.

16 MR. STILLEY: Well, I didn't know that was going to
17 happen.

18 THE COURT: Right. Right. You should have taken
19 control.

20 MR. STILLEY: I can't reach out and grab him, you
21 have it do extemporaneously.

22 THE COURT: He said certain people kept him -- what
23 kind of distance was it?

24 MR. STILLEY: Slapping distance, that's the facts.
25 That is the facts. And that's what I've been trying to

1 present. This whole case is the facts.

2 THE COURT: Oh, really?

3 MR. STILLEY: Yes.

4 THE COURT: Oh, okay.

5 MR. STILLEY: Just the facts. But we have to create
6 a picture enough so that the jury has enough information to
7 make a fair decision.

8 THE COURT: I'm well aware of the picture you were
9 trying to paint.

10 MR. STILLEY: Well, it was not me that created the
11 picture. It was somebody else who created a picture and I'm
12 just trying to make an accurate painting.

13 THE COURT: Well, sometimes they asked was it the
14 chicken first or was it the egg first. They didn't take him
15 to the juvenile court, did they?

16 MR. STILLEY: Well, wait a minute, let me -- since
17 we're going to go there, I think that they did. We don't
18 have testimony from any witness here because -- and I'm
19 satisfied you kept that if I say anything about it, but it's
20 my understanding from information and belief that they told
21 Mr. Blair that that was a good way to get him to the place.
22 And the exhibit --

23 THE COURT: But the judge made that decision, that's
24 what you're telling me.

25 MR. STILLEY: Well, the judge made that decision.

1 THE COURT: So that's -- you know, that's there.

2 MR. STILLEY: Well, let me explain why that's not
3 there. He was not allowed --

4 THE COURT: Well, forget all that. You just go off
5 on these tangents because you're still on this false
6 imprisonment, this is a bad thing to do. The whole religious
7 thing, that's a bad situation and so forth. They got some
8 other version of the bible. I mean, please. Let's get to
9 the employer/employee relationship, okay.

10 MR. STILLEY: Certainly, Judge. And in order to
11 do -- let's just assume that he was -- there was no order
12 whatsoever. Can we do that?

13 THE COURT: Assume there was no order? No. It's
14 not -- I don't even know it's relevant. So that's what I'm
15 saying, we start talking about these things and it is not
16 really relevant. Talk about the employer/employee
17 relationship.

18 MR. STILLEY: Okay. Here's what --

19 THE COURT: Now, I give you this, now there is some
20 approximation of some hours, but it seems very, very
21 uncertain about. But there was some approximation, and, you
22 know, so there is something there in terms of hours that
23 Mr. Blair claims, 15 to 20 something hours he said. What did
24 he say, 15 to 27 hours a week. I mean, there is no actual
25 records. I mean, I understand in such a situation perhaps

1 there would not be records kept. But he had that. He had
2 some hours that he claims that he was working. But the
3 question becomes is this part of the curriculum or is this,
4 you know, a real employment job situation as opposed to
5 student activity, part of the curriculum.

6 MR. STILLEY: The jury would have to decide the
7 hours on that. But before we get too far afield here on the
8 lack of records, we know why there's no records, and that is
9 because the defendants said to not keep records, and we check
10 your stuff and if we find you're keeping any notes, journals
11 or anything like that, we stop it. He couldn't keep it and
12 they wouldn't --

13 THE COURT: Fine. I'm giving you a concession
14 there. You're just beating something that's not about
15 anything. So let's move to the other aspect of it. I'm not
16 concerned and I don't have a big problem with the hours,
17 keeping of hours.

18 MR. STILLEY: Based on my research of the law on
19 Fair Labor Standards --

20 THE COURT: How would you distinguish what Mr. Blair
21 says he did from student activities of a curriculum of an
22 alternative religious institution? That's where we have to
23 go. That's the key. Right there, that's it.

24 MR. STILLEY: Okay. Let me distinguish this.
25 There's a lot of things you can do to distinguish this. But

1 in an alternative school, the student goes in, the student
2 goes in to class, and they study and they get credit for the
3 study that they did. In this case, no credit. No age
4 appropriate instruction whatever. In the ordinary
5 alternative school that you're talking about, you go in and
6 you are not -- you are compelled to do your work and mind
7 your business. You're not compelled to go to do other
8 things. And if you do have a class such as shop where you
9 learn how to weld or use a belt sander or other things like
10 that, you get credit. And the rules say, the Fair Labor
11 Standards Act rules say in order for that to be considered
12 instruction rather than work, you have to get credit. That's
13 one thing that takes it completely out of the realm of
14 educational type situation.

15 THE COURT: Fine. Let me take this under
16 consideration. I'm going to rule on this in a little while.
17 Why don't we take a little break and start back. Why don't
18 we let the jury know that we're going to start back at ten
19 minutes to 12, and then we'll go to 12:30. And then I'll
20 make a ruling on this issue. And then if we've only got
21 whichever way that is, we'll just continue on. If we've just
22 got the battery issue left, we'll deal with that. If we have
23 both, we'll continue on.

24 MR. STILLEY: Thank you, Judge.

25 (Court in recess from 11:35 a.m. until 11:57 a.m.)

1 THE COURT: Counsel, for the time being the Court is
2 going to deny the motion for directed verdict on the Fair
3 Labor Standards Act claim. The Court believes that it needs
4 a little bit greater basis if it's going to grant this in
5 terms of curriculum versus job situation in terms of the
6 items Mr. Blair mentioned that he performed at the school in
7 terms of whether or not this is part of the curriculum.
8 We've heard Mr. Blair's version that this was work. The
9 Court believes that even though in terms of an alternative
10 school, it may very well be that this is the curriculum based
11 situation. But the Court believes it needs testimony on that
12 if it's going to make a ruling in that regard. So the Court
13 will just hear further evidence on that and we'll entertain
14 that motion at a later time. Okay.

15 MR. OLIVER: May it please the Court. Two problems
16 then as we move forward that I want to bring to the Court's
17 attention. One is that if the Court is going forward, both
18 Mr. Parrish and Mr. Blair are on their way. The odds of them
19 getting here today are zero. So in the course of the
20 evidence we want the Court to know that Mr. Parrish and
21 Mr. Ron Blair based on the calls have left to be here and
22 they probably will not be here before close.

23 THE COURT: Are they going to give testimony about
24 the curriculum versus employment?

25 MR. OLIVER: No, just the battery. I mean, Mr. Drew

1 Parrish is a supposed witness to the battery. I assume if
2 you're going to --

3 THE COURT: Well, the battery wasn't gone anyway
4 regardless.

5 MR. OLIVER: I was going to move to dismiss that on
6 the pending jurisdiction basis. But we still have a
7 logistical problem.

8 THE COURT: We've gone this far in the case, I will
9 not be inclined to --

10 MR. OLIVER: Then I want you to know we have a
11 logistical problem.

12 THE COURT: Where are they coming from?

13 MR. OLIVER: Knoxville, Tennessee and Alma,
14 Arkansas, and they are both on their way.

15 THE COURT: They ought to get here soon then.

16 MR. OLIVER: We're trying.

17 THE COURT: Better call them.

18 MR. OLIVER: Already done that, Judge.

19 THE COURT: Call them again.

20 MR. OLIVER: I'll try that too.

21 THE COURT: Maybe we ought to perhaps finish this
22 testimony today.

23 MR. OLIVER: We'll try.

24 THE COURT: Okay. Let's bring the jury on. The
25 defendants can start their case.

1 MR. OLIVER: I'd also like to complain to the Court
2 the intention of Mr. Stilley, and maybe the Court doesn't
3 want to hear it, but Mr. Stilley intentionally left out when
4 he was talking to the Court about the order that Judge
5 Cottrell's order, the concept of that order and the fact that
6 it says Baptist Boys Academy in Missouri or like facility.
7 Mr. Stilley -- that was in my opinion an intentional omission
8 intended to mislead the Court in the course of argument.
9 We've been through this with him before, and I object to it
10 and want to call it to the Court's attention.

11 THE COURT: Very well. Mr. Stilley, be mindful, you
12 are an officer of the court.

13 MR. STILLEY: Yes, Your Honor, I certainly did not
14 intend to mislead you.

15 THE COURT: Right. Bring the jury on.

16 (The following proceedings continued within the
17 hearing of the jury:)

18 THE COURT: Good morning yet, ladies and gentlemen
19 of the jury. Okay. We ready to proceed?

20 MR. BRIGGS: Your Honor. Yes, Your Honor.
21 Defendants call Bo Gerhardt to the stand.

22 THE COURT: Very well.

23 BO GERHARDT,
24 Having been first duly sworn, was examined and testified as
25 follows:

DIRECT EXAMINATION

BY MR. BRIGGS:

Q. Mr. Gerhardt -- would you please state your full name for the record.

A. My name is Sammy Gerhardt, G-e-r-h-a-r-d-t.

Q. And, Mr. Gerhardt, do you have a nickname that you go by?

A. Yes, sir.

Q. And what is that?

A. Bo.

Q. Bo. For how long have you gone by that nickname?

A. Since my birth date when I was born.

Q. Mr. Gerhardt, do you work at Mountain Park Baptist Church and Boarding Academy?

A. Yes, sir.

Q. What's your job title there?

A. Dean of men.

Q. Did you work at Mountain Park back in October of 2001?

A. Yes, sir.

Q. And were you also the dean of men back then?

A. No, sir.

Q. What were you? What was your job title back then?

A. I don't know if I really had a job title. My description of my duties were a boys learning center supervisor. And I just worked with the boys supervising in

1 and out of school.

2 Q. So you supervise the learning center and then you also
3 worked and supervised the boys outside of the learning
4 center?

5 A. Yes, sir.

6 Q. How old a man are you?

7 A. I'm 25.

8 Q. When was your birthday?

9 A. February 11th, 1979.

10 Q. Okay. So back in October 2001 you would have been 22?

11 A. Yes, sir.

12 Q. Sir, are you married?

13 A. Yes, sir, I am.

14 Q. What's your wife's name?

15 A. Julie Ann Gerhardt.

16 Q. And is Julie also employed with Mountain Park?

17 A. Yes, sir.

18 Q. Your title back in 2001, you said you worked with the
19 learning center. Did that make you a staff member back then
20 in Mountain Park?

21 A. Yes, sir.

22 Q. And your wife Julie, was she also working at Mountain
23 Park in 2001?

24 A. Yes, sir.

25 Q. And was she also a staff member?

1 A. Yes, sir.

2 Q. Back in 2001 to whom did you report at Mountain Park?

3 A. Brother Gerhardt, Sam Gerhardt, my father.

4 Q. Can you describe your duties as a learning center
5 supervisor back in 2001?

6 A. Yes, sir, as the duties of a supervisor you make sure
7 the day gets started off right by handing out tests, helping
8 the students set their goals. You help students if they have
9 problems with academic questions, they need help in math, or
10 algebra, whatever subject they're working in, you're there to
11 assist and make sure their homework is turned in. You may
12 assign homework. You check their goals and make sure they
13 did the work they were supposed to do that day. You do those
14 sort of responsibilities of education in the learning center.

15 Q. Okay. And this is part of that integrated educational
16 program that Mrs. Wills testified about yesterday?

17 A. That is correct.

18 Q. Okay. Back in 2001 did your duties include hiring any
19 staff?

20 A. No, sir, they did not.

21 Q. No. Did you have authority to hire or fire staff?

22 A. No, sir, I did not.

23 Q. Did you have authority to set salaries for any staff at
24 Mountain Park?

25 A. No, sir, I did not.

1 Q. Did you ever work at Palm Lane?

2 A. No, sir, I have not.

3 Q. Sir, did you graduate from high school?

4 A. Yes, sir, I did.

5 Q. Where did you graduate from high school?

6 A. Mountain Park Baptist Boarding Academy.

7 Q. So you actually attended the school you work at now; is
8 that right?

9 A. Yes, sir, I did.

10 Q. Okay. When did you graduate?

11 A. In May of 1997.

12 Q. And after you graduated from Mountain Park, did you go
13 to college?

14 A. Yes, sir, I did.

15 Q. And where did you go to college?

16 A. I went to Crown College in Powell, Tennessee just
17 outside of Knoxville, Tennessee.

18 Q. And is Crown College a Baptist college?

19 A. Yes, sir, it is.

20 Q. Now, in this case we've heard an awful lot about having
21 to do various tasks both in and outdoors that students
22 participate in while they are at Mountain Park and Palm Lane.
23 Sir, when you were a student at Mountain Park, where did you
24 live?

25 A. When I was a student at Mountain Park I lived in the

1 boys' dorm with the boys.

2 Q. And just so we can kind of get a picture for it, the
3 boys, they live in a single dormitory at Mountain Park; is
4 that right?

5 A. Yes, sir, that is correct.

6 Q. Okay. How many stories or how many floors did the
7 dormitory have back in 2001?

8 A. It had and still does have two floors.

9 Q. Okay. And what's done on each floor, if you will?

10 A. The layout of it is downstairs you walk in and it's
11 kind of a mud room, is what we call it. You kick your boots
12 off so you don't track through the dorm. To the left you'll
13 see a laundry room where we have commercial washers and
14 dryers. You continue to walk down a hall. There's a
15 toiletries on the left. On the right you have showers. You
16 walk on in a little farther you have what we call the sink
17 room where we have sinks and mirrors, a water fountain,
18 lockers. And also downstairs is also another side room
19 that's connected that's also full of lockers for students.

20 If you go up the stairs to the left it will be just
21 bunks where we just have bunk beds and a fireplace and a big
22 screen TV for movies.

23 Q. Okay. So the dorm space is one big common area where
24 there are bunk beds and chairs and a television and such?

25 A. That's correct.

1 Q. While you were a student at Mountain Park,
2 Mr. Gerhardt, did you also participate in various tasks that
3 the other male students performed?

4 A. Yes, sir, if the boys worked mowing lawns, I was right
5 beside them. I was no different. Whatever duties, work
6 details, whatever it was, I was one just like them.

7 Q. Okay. Having been a graduate at Mountain Park and also
8 having worked there now, can you tell the jury what the
9 mission or purpose of Mountain Park is?

10 A. First and foremost the mission of Mountain Park is to
11 help young people have a walk with God to provide an
12 atmosphere that nurtures biblical self image, respect for
13 authority. And our other mission also is provide a college
14 preparatory academic program.

15 Q. Okay. And I'll show you page 2 of what's already been
16 marked and offered as Plaintiff's Exhibit 9. And are those
17 twin missions, are those within Plaintiff's Exhibit 9 the
18 Mountain Park student/parent handbook?

19 A. Yes, sir, they are.

20 Q. Okay. Mr. Blair -- or sorry, pardon me, Mr. Gerhardt,
21 what I'd like to do is go through a typical day at Mountain
22 Park. If you could walk us through it. And I'll show you
23 what's been marked as Plaintiff's Exhibit -- or, excuse me,
24 Defendants' Exhibit C. And pointing to what's described as a
25 Monday, sir, taking a look at that for just a moment, can you

1 tell us if that accurately reflects what a typical Monday
2 would be like at Mountain Park?

3 A. Yes, sir, that's an accurate description of it.

4 Q. Okay. And what is Defendants' Exhibit C? Is that for
5 the male students?

6 A. Yes, sir, it is.

7 Q. Okay. Do the young ladies, the women, do they maintain
8 a different schedule than the boys?

9 A. I don't know exactly their schedule because I deal with
10 just the boys on a daily basis. I can give you my opinion.
11 I believe, I'm not positive, but I believe it is somewhat
12 different.

13 Q. Okay. So would it be fair to say then that boys and
14 girls don't mix at Mountain Park?

15 A. That is very fair to say.

16 Q. Now, taking a look at the typical Monday, if you could
17 walk us through it. Starting with rise and shine and
18 personal hygiene, can you explain for the jury what's meant
19 by personal hygiene?

20 A. Personal hygiene is the daily care of your body, brush
21 your teeth, comb your hair, washing your face.

22 Q. Why is that important, Mr. Gerhardt?

23 A. There's several reasons why it's important. No. 1 in
24 my mind is that a Christian ought to make sure their body is
25 kept nice and clean because it is the temple of God. And

1 that, you know, you smell good, you look good, you look
2 sharp. I think Christian people need to look good and keep
3 their body clean so we can use it for a long time.

4 Q. And when you say that in your faith that the body is a
5 temple of God, does that kind of relate to this biblical self
6 image that you testified about a few minutes ago that's a
7 mission of Mountain Park?

8 A. I think that's hand in hand, yes, sir.

9 Q. Now, bible reading and personal devotions, can you
10 describe that briefly for the jury?

11 A. Yes, sir, in the morning we all go upstairs and we read
12 the bible from Genesis through Revelation. And January 1st
13 we begin reading Genesis 1, and we'll read about 15, 20
14 minutes. And everybody is in the dorm, sat down kind of a
15 semi-circle, and each person reads a versus until we read for
16 the 15 or 20 minutes.

17 After that the student has personal time to
18 themselves. They can go back to their bunk. They can then
19 choose to have a personal devotion, reading their bible, just
20 their personal time, not as a dorm. Or they can take that
21 time and kneel by their bunk and pray, but just kind of quiet
22 time with them and God, not as a whole group.

23 Q. After that we eat breakfast. And common area cleaning,
24 can you describe for the jury what common area cleaning is?

25 A. Yes, sir. We have a job list that rotates every two

1 weeks. And on that job list there will be multiple chores.
2 No. 1 may be laundry, and there also may be cleaning, mopping
3 downstairs, cleaning, mopping upstairs. Dusting, dorm trash,
4 sinks and mirrors, and showers and toilet area. And each
5 student has their name besides a certain duty. Or their team
6 is besides a certain duty that must be done that morning.
7 And so during that time the student has to get the right
8 chemicals and the right things and clean the toilets or
9 clean, sweep and mop, just whatever needs to be done that day
10 for that particular team.

11 Q. Okay. So the boys, they work in teams when they do the
12 common area cleaning?

13 A. Yes, sir, they do. One team will be upstairs, one team
14 will be downstairs, one team will be in the laundry. So they
15 stay together as a team as they perform these common area
16 cleaning.

17 Q. Okay. Now, this team, is team work important to the
18 missions of Mountain Park?

19 A. I know it's very important to the mission at Mountain
20 Park.

21 Q. And does it also relate to the positive peer pressure
22 that Mountain Park is trying to instill in its students?

23 A. Yes, sir, it does. It does definitely do that.

24 Q. Okay. Now, after common area cleaning it looks like we
25 get ready for school and academic training. Is that the

1 dual, both bible and academic curriculum, integrated
2 curriculum that we've talked about already?

3 A. Preparation for school means that a student, the
4 student would at that time get their homework together, their
5 PACE, make sure their pencils are sharp and they got the
6 right pens, whatever they need for that school day. It's
7 just preparation time so they can walk into the learning
8 center ready to go.

9 Q. Okay. And for about how long are they in the learning
10 center then?

11 A. They are in the learning center from nine o'clock. We
12 have one break up till noon or ten till noon. We eat at
13 noon. We're out for an hour lunch break and then we resume
14 classes at one o'clock and go till two o'clock.

15 Q. Okay. Now, after two o'clock what happens next?

16 A. From two to 2:30 the students then were dressed more in
17 preppier clothes, khakis and like a button down T-shirt,
18 dress shirt. Then we change clothes to blue jeans and
19 T-shirts, put your work boots on to get ready to go to work
20 during that 30 minutes time that we prepare for work details.

21 Q. Okay. Now, do you do work detail every afternoon?

22 A. No, sir, we don't. I'll tell them, I'll tell the boys
23 beforehand, for instance, if it's a beautiful day and I know
24 the fish are biting this time of year, we'll tell them to go
25 get their fishing clothes on, we'll go fishing. Or if we

1 want to play basketball, I'll tell them to put their
2 basketball shoes on. It just depends what the weather is
3 like.

4 Q. Okay. We're -- back in 2001 were you also involved in
5 deciding what the activity would be in the afternoon?

6 A. Yes, sir, I was very much involved with deciding the
7 activity of the afternoons.

8 Q. Okay. And that was done under the direction of Pastor
9 Gerhardt?

10 A. Yes, sir.

11 Q. On occasions back in 2001, maybe early 2002 when you
12 were at Mountain Park when the kids were going to go out and
13 play games, say basketball, would you also play along with
14 them?

15 A. Yes, sir, I would. We would -- I'd be right there
16 beside them, the best that I could at that time.

17 Q. Okay. Why do you say the best that you could at that
18 time?

19 A. I had just went through a serious knee surgery where
20 they went in and put several bolts through my knee. So it
21 limited me in some of the activities of running up and down
22 the court. Limited me in running around bases, those kind of
23 things. So the best of my -- I would either coach or pitch
24 the softball. I would do what I could that wouldn't
25 interfere with my knee.

1 Q. Okay. Now, you talked about some of the work detail.
2 Are these -- are these tasks that are also done in teams by
3 the students?

4 A. Yes, sir, they are also done in teams by the students.

5 Q. Okay. And if you can tell the jury, what are some of
6 those work detail tasks that are done at Mountain Park?

7 A. A lot of it is seasonal. In the summertime the grass
8 grows terribly fast. And so we'll get out and we'll mow if
9 it needs to be mowed. If the concrete is dirty, we'll sweep
10 it off. If we have something that -- a tree that's fallen
11 down, we'll pick up the brush around, haul it around, pick up
12 limbs, pick up trash. We live down a dirt road so we wash
13 vehicles and make sure the vans, the vans, the vehicles on
14 the property, all the vehicles on the property are well
15 maintained and are washed and look good.

16 Those are the -- and we haul firewood. We have wood
17 burning stoves where we get our heat and hot water. So in
18 the wintertime that keeps us pretty busy hauling wood to the
19 stoves so we can maintain heat and hot water. So those are
20 some of the activities we would do in a typical work
21 afternoon.

22 Q. Okay. Now, are some areas of Mountain Park's campus
23 actually as far as the lawns and stuff, are they actually
24 maintained by somebody other than the students?

25 A. Yes, sir, they are. We have on staff during the summer

1 months, the grass growing months, the gentleman that his job
2 is to drive a John Deere tractor and mow most of the
3 property. There's just a little bit he leaves for us to do.

4 Q. Okay. Now, why don't you have them do the whole
5 property? I mean, why do you have to have some of the
6 students do some of the property? Why do you do that?

7 A. Well, to teach a work ethic, a good work ethic. I
8 think a lot of teenagers today don't know how to work and the
9 meaning of work. And it was good for me when I was younger
10 to push a lawn mower and it taught me a lot of things. So we
11 can use that same pushing a lawn mower or pushing a weed
12 eater to help our young people we have in school with us.

13 Q. Are most of the students who come to Mountain Park, did
14 they have some sort of troubled past?

15 A. Yes, sir, most of them do.

16 Q. Okay. Does the work detail help in addressing the past
17 of these youths in trying to remedy their -- remedy
18 themselves to be more productive citizens?

19 A. I think so. I know so. You know, religion, you can't
20 make anybody accept it. And I tell parents that. You can't
21 make a boy trust Christ as his personal savior. But you can
22 teach him a good work ethic. He can step right back out in
23 society, fulfill a job and be a good citizen. And he can put
24 food on the table for his family. And I think work ethic and
25 incorporate that to our ministry has definitely helped a lot

1 of young people. Because a lot of young people, they may not
2 trust Christ. And if we can teach them how to work, I think
3 we have accomplished something.

4 Q. So it goes back to the mission of trying to nurture
5 that Christian values and Christian development?

6 A. Yes, sir.

7 Q. Okay. And also looking at the missions, does it also
8 help to develop respectfulness and discipline and leadership?

9 A. I know it does. Keeping the property nice, lawns
10 mowed, vehicles washed, I think that's a good -- I think
11 that's a good basis for the Christian service. A Christian
12 should have those kind of things, so I certainly believe so.

13 Q. Now, in a typical afternoon for how long do the boys do
14 this work detail if they are working and not doing sports?

15 A. We'll start at 2:30 and we will typically quit between
16 4:30 and five o'clock. So you're not looking at any more
17 than two to two and a half hours. Most of the time we do
18 stop, though, at around 4:30.

19 Q. Okay. Sir, that work detail schedule, does that change
20 a little bit on Saturdays and Sundays?

21 A. Yes, sir. On Saturdays the students, we get up a
22 little later, get up at seven. Breakfast at 7:30. Then we
23 have our common area cleaning and bible reading, those kind
24 of things. So we actually don't start work until a little
25 later in the morning. So we may start work at nine, 9:30.

1 And we'll stop at about 11:30. And most of the time on
2 Saturdays I make a point that Saturday afternoon we go
3 fishing or we play ball just about every Saturday. It's very
4 rare a Saturday in the afternoon that we do work. It's very
5 rare.

6 Q. Okay. Very good. On Sundays do the boys do this
7 outdoor work detail?

8 A. No, sir, Sundays we do no work detail. The only thing
9 we do is common area cleaning. Cleaning the dorm as our --
10 as an everyday chore, but we do not do any work outside
11 cleaning the dorm.

12 Q. Is that because it kind of goes against your Christian
13 values and beliefs?

14 A. Yes, sir.

15 Q. Mr. Gerhardt, do the boys actually do any of the --
16 students at Mountain Park, do they make any products that
17 Mountain Park sells?

18 A. No, sir, they do not.

19 Q. Okay. Are any horses or cattle or anything maintained
20 on Mountain Park?

21 A. Brother Gerhardt owns some horses himself, but that's
22 it. But Mountain Park does not maintain any horses.

23 Q. And is Mountain Park in the business of buying or
24 selling or raising horses?

25 A. No, sir, they are not.

1 Q. Is Pastor Gerhardt in that business?

2 A. No, sir, he is not.

3 Q. Will the students do chores into the night ever?

4 A. No, sir, not that I can recall. We don't work into the
5 night.

6 Q. Okay. Are chores ever assigned as a corrective
7 measure?

8 A. Yes, sir, they are.

9 Q. Why are chores assigned as a corrective measure?

10 A. Chores are assigned as a corrective measure if a
11 student is not willing to cooperate or not willing to do the
12 things that are required by them. And during the time all
13 the other boys may be fishing or playing ball, basketball,
14 volleyball, whatever it may be, that student may be needing
15 to stack wood or that student may be needing to sweep
16 concrete. So that would be the times that a student would be
17 working as a discipline.

18 Q. Okay. And doing chores as corrective measure, so it's
19 kind of done to get the student to recognize what they've
20 done and that they haven't done something properly or they've
21 acted improperly and it's to correct the behavior?

22 A. Yes, sir, it's one of the last measures.

23 Q. Mr. Blair, do you recall -- my apologies.

24 A. No offense.

25 Q. Mr. Gerhardt, do you recall Jordan Blair being at

1 Mountain Park?

2 A. I recall him being there, yes, sir, I do.

3 Q. Okay. Do you recall when you met him?

4 A. No, sir, I don't recall when I actually shook his hand
5 for the first time.

6 Q. Do you typically greet most of the male students who
7 arrive at Mountain Park?

8 A. Yes, sir. I'm the one who greets almost every male
9 student at Mountain Park.

10 Q. And when you do greet new students, do you greet them
11 alone or is there somebody else with you?

12 A. I don't recall ever greeting a student alone. There's
13 always someone with me.

14 Q. So you can't -- strike that. Do you recall what date
15 that Mr. Blair arrived in Mountain Park?

16 A. Just through this court session here, but off the top
17 of my head, I would not know. I hear it's October 24th,
18 2001.

19 Q. Now, Mr. Gerhardt, you heard Mr. Blair's testimony
20 during this trial that he claims that you slammed him up
21 against a counter sink and a wall. Now, and he claims that
22 you did that on the first day that he was at Mountain Park.
23 Mr. Gerhardt, did that, in fact, happen?

24 A. No, sir, that never did happen.

25 Q. Okay. Does Mountain Park maintain a no-touch policy

1 for staff?

2 A. Yes, sir, it does strictly maintain a no-touch policy
3 for staff.

4 Q. Would you have even been alone with Mr. Blair in the
5 sink area to permit you to do that?

6 A. No, sir, I would have not been alone with him.

7 MR. BRIGGS: May I confer just a moment, Judge?
8 Thank you. That's all I have at this time, Your Honor.

9 THE COURT: Very well. We'll have our luncheon
10 recess at this time. Recall the admonition, ladies and
11 gentlemen of the jury. Return to your jury rooms at 1:30 and
12 we'll continue at that time.

13 (Court in recess from 12:28 p.m. until 1:43 p.m.)

14 THE COURT: Good afternoon, ladies and gentlemen of
15 the jury. Shall we continue. Cross-examination of
16 Mr. Gerhardt.

17 CROSS-EXAMINATION

18 BY MR. STILLEY:

19 Q. Mr. Gerhardt, can you tell us about your time frame of
20 reference with respect to Mountain Park? And in order to do
21 that can you tell us when you first started in school at
22 Mountain Park?

23 A. I started high school in June of 1993.

24 Q. When you started, did you have a substantial idea of
25 the operations of that school?

1 A. Please restate the question.

2 Q. Certainly. Let me rephrase it a little bit. How
3 long -- let me strike that question and ask another. How
4 long did it take before you obtained some position of
5 authority at Mountain Park?

6 A. A long time. When I was a student and I lived in the
7 boys' dorm, I would have been no different than a new
8 student, you know, who was just enrolled. I had an
9 orientation period where I was strictly watched. There was
10 also a period where I was by myself. And after that length
11 of time there was a period where I became an orientation
12 guide myself. So I started from the very bottom and through
13 just the impression of the ministry, the Lord, I was just
14 able to move right up, so to speak, the ladder.

15 Q. Okay. Would it be fair then to say that you were
16 familiar with the operations of Mountain Park since at least
17 about 1994?

18 A. Familiar with the operations, yes, I was familiar with
19 the operation.

20 Q. Has that operation been roughly the same from 1994 to
21 2004?

22 A. Yes, it has.

23 Q. Okay. When did you first get a paid position?

24 A. I don't recall the date when I became a paid position.

25 Q. Do you recall the year?

1 A. I can't even honestly recall the year when I became one
2 for a paid position.

3 Q. It that before you got out of high school?

4 A. Yes, it was. I was -- through the Lord's grace I was
5 able to get to junior staff position, which means I was still
6 a student, still in high school, but was in a position that I
7 had a small paycheck every month.

8 Q. Okay. And do you know how long that you had that
9 paycheck while you were in school?

10 A. Probably, I'm going to roughly guess about maybe two
11 years.

12 Q. Did any other students in the school who were actually
13 enrolled in the school get paid jobs?

14 A. At that time I remember at least two other junior staff
15 that were males at that time that were also junior staff
16 position.

17 Q. Okay. Do you have any personal knowledge of the
18 criteria that was used to select persons or that is used to
19 select persons for paid positions?

20 A. That question would have to be directed to Brother
21 Wills or Brother Gerhardt. They have their own criteria. I
22 don't know what it is.

23 Q. Okay. So you don't have personal knowledge, correct?

24 A. No, sir. They have their own criteria that they
25 choose.

1 Q. Now, some of the students are taught things like
2 welding; is that correct?

3 A. Yes, sir.

4 Q. That's not a certified program, is it?

5 A. I don't know.

6 Q. And you don't have any certified instructors on that
7 program, do you?

8 A. I don't know that either.

9 Q. Who would have that knowledge?

10 A. I don't know who would have that knowledge.

11 Q. Nobody gets any credit for the learning of things such
12 as welding, do they?

13 A. I do not know.

14 Q. Did you ever learn anything other than a strictly
15 academic subject while you were in high school in Mountain
16 Park?

17 A. Certainly.

18 Q. And what did you learn?

19 A. Practical things of life that I learned while a student
20 at Mountain Park, daily practical shoe leather things.

21 Q. Did you get any credit for having learned those things?

22 A. No, I did not get credit for learning those things.

23 Q. Isn't it true that there are any subjects at Mountain
24 Park for which students get credit except academic?

25 A. Please restate the question.

1 Q. Isn't it true there is no subject at Mountain Park that
2 students get credit except academic subjects such as math and
3 English?

4 A. That is not true.

5 Q. What are subjects that are not academic subjects but
6 they are such that the student gets credit for that subject?

7 A. We have bible study credit. For instance, you get an
8 elective credit for attending bible studies and churches. So
9 we do give a bible study, bible elective credit. You also
10 get credit for PE. We get credit, the PE, even though we may
11 not play basketball every day for an hour, but combined with
12 the work and the PE that we do in the afternoons, it is
13 granted an academic or PE credit.

14 Q. But you're not telling this jury that hauling wood is
15 PE, are you?

16 A. I'm saying that we get credit for the things that we do
17 in the afternoons. That would be physical things.

18 Q. But you're not telling this jury that wood hauling is
19 physical education, are you?

20 MR. BRIGGS: Objection, asked and answered.

21 MR. STILLEY: Your Honor, it's not been answered.

22 THE COURT: You may answer.

23 A. I will answer it the same way I just previously
24 answered the question. We get credit for or we give credit
25 for the activities that we do in the afternoons, whether it

1 be playing ball, whatever physical activities it may be.

2 Q. That's not formal -- there's no formal program of that,
3 is there?

4 A. I guess I don't understand your question.

5 Q. There's no formal program whereby the person gets
6 credit for having hauled wood or fixed fences or other things
7 of that nature, correct?

8 A. I still don't understand your question. I'm just
9 ignorant to the phrasing. I don't understand.

10 Q. Now, when you graduated, you got transcripts, correct?

11 A. I did.

12 Q. And on that transcript it says things like math and
13 English, correct?

14 A. Yes, it does.

15 Q. And you got credit for that, correct?

16 A. Yes, I did.

17 Q. There's nothing on your transcript or anybody else's
18 transcript that says welding or plumbing or anything of that
19 nature, correct?

20 A. On my transcript it does not. I cannot speak for
21 anybody else's transcript.

22 Q. You have no personal knowledge of that?

23 A. I can only speak for my transcript. Not on my
24 transcript. I cannot speak for anybody else's transcript.

25 Q. You've been on paid staff for about eight years or at

1 least eight years, correct?

2 A. I got on -- I was on paid staff as a junior staff
3 worker before I went to college. After I graduated from
4 college with my degree in education, I came back and was on
5 married staff, and now have been on married staff for almost
6 four years.

7 Q. So you've got a lot of experience at this school,
8 correct?

9 A. Yes, sir.

10 Q. If there was a formal program of welding education or
11 plumbing education or some other such program, you would have
12 knowledge of it, wouldn't you?

13 A. I guess I don't know the criteria of having a formal
14 program. I don't know the criteria for having a formal
15 program of it.

16 Q. You don't know the difference between a formal program
17 and just something that you do in afternoons?

18 A. I guess I do not.

19 Q. Okay. Well, you do know what shows up on transcripts,
20 don't you?

21 A. I know what's on my transcript, yes, I do.

22 Q. Well, you have access to other students' transcripts,
23 don't you?

24 A. I guess I don't typically look at other students'
25 transcripts.

1 Q. That's not the question.

2 A. I guess I suppose if I wanted to get access, yes, I
3 could.

4 Q. You routinely get access to transcripts, don't you?

5 A. Not routinely, no.

6 Q. Whenever you want to, do you not?

7 A. Like I already answered, if I wanted it, I could.

8 Q. Have you ever seen a transcript from Mountain Park that
9 said anything about welding or plumbing or other courses such
10 as welding or plumbing?

11 A. No, sir, I have not seen that on any transcript.

12 Q. And you've looked at lots of transcripts, have you not?

13 A. A lot, that's pretty subjective. That's very relative.

14 A lot for some may be five. A lot for some may be 100.

15 Q. Can you tell the jury about how many of these
16 transcripts you've seen?

17 A. I haven't seen a whole lot of transcripts. I would say
18 maybe a dozen.

19 Q. Did you -- now, you told us you had learned some
20 general things while you were in high school; is that
21 correct?

22 A. Yes, that is correct.

23 Q. Did you actually -- whether or not you got credit for
24 it, did you learn anything about welding while you were in
25 high school?

1 A. Yes, I did.

2 Q. Did you learn anything about plumbing while you were in
3 high school?

4 A. No, sir, I don't know much about plumbing.

5 Q. But that education was not gained through any formal
6 course of instruction, correct?

7 A. The things that I learned such as welding was taught by
8 someone I know had background and training in welding, and he
9 did teach it in a very formal way with teaching us how to get
10 started, how to mix the acetylene with the oxygen. It was
11 very formal. It wasn't just a fly-by-night thing. We had to
12 wear our goggles and our gloves and he went through the
13 procedures of how to do things. So in a way, yes, it was
14 formal in his instructions to teaching us how to do it.

15 Q. What's this gentleman's name?

16 A. His name was Matthew McFadden.

17 Q. Matthew McFadden, he's not a certified instructor for
18 welding, is he?

19 A. You'd have to ask Matthew McFadden. I do not know his
20 educational background.

21 Q. Mountain Park has no formal program or certified
22 program for welding, correct?

23 A. Again, like I said, I don't know.

24 Q. What about Palm Lane, do you have personal knowledge
25 about the operations of Palm Lane?

1 A. Personal knowledge, to a very slight degree.

2 Q. Well, how many times have you been there?

3 A. I don't know how many times I've been on the property.

4 Q. Can you come close?

5 A. I'd say once again maybe 20 times.

6 Q. Have you helped to haul students there?

7 A. No, I have not.

8 Q. Have you ever rode to Palm Lane with a load of
9 students?

10 A. No, sir, I have not.

11 Q. Have you ever rode to Palm Lane with as many as one
12 student?

13 A. No, sir, I have not.

14 Q. Have you ever come from Palm Lane back to Mountain Park
15 with any students, one or more students?

16 A. Yes, sir, I have.

17 Q. And how often has that happened?

18 A. It has happened one time.

19 Q. You told us that you had been down there about 20
20 times. About how long do you spend each time?

21 A. Most of the time when I go to Palm Lane, I've been down
22 visiting my grandparents, Brother and Mrs. Wills on a
23 vacation. And we'll drive back and forth for church. And
24 that's about the extent of the times I've been there, back
25 and forth to church.

1 Q. Now, but when you go for a trip, how many days do you
2 typically stay?

3 A. Stay on my vacation?

4 Q. Right.

5 A. I guess it depends how much time I have allotted. I've
6 stayed for as many as three days, and I've stayed as many as
7 ten days.

8 Q. Is ten days the most that you've spent at Palm Lane?

9 MR. BRIGGS: Your Honor, I'm going to object at this
10 point. This is totally outside the scope of direct under
11 Rule 613(b). Moreover, Your Honor, I don't think where he is
12 leading has any relevance to the two remaining claims in this
13 lawsuit.

14 MR. STILLEY: Your Honor, I'm just trying to
15 establish a basis of the knowledge about the operation of
16 Palm Lane, whether he has any knowledge or not.

17 THE COURT: Why don't you ask him about that and
18 stop asking him about his vacation. Sustained.

19 BY MR. STILLEY:

20 Q. Do you have any personal knowledge about the operations
21 of Palm Lane Academy?

22 A. I'll answer the question like I previously answered. I
23 have slight information about Palm Lane Academy.

24 Q. Have you ever worked on campus there?

25 A. No, I have not ever worked on the campus of Palm Lane.

1 Q. Okay. You told us where your degree was from. Can you
2 tell us again?

3 A. I didn't understand the question.

4 Q. Where is your degree from?

5 A. My degree is from Crown Bible College in Powell,
6 Tennessee, right outside Knoxville, Tennessee.

7 Q. What was your major?

8 A. My major is secondary education, the field of physics.

9 Q. How long did you spend at Crown Bible College to get
10 your degree?

11 A. I was able to by God's grace get a four-year degree in
12 three years.

13 Q. And did you spend that time at Crown College?

14 A. Yes, sir, I spent the entire time at Crown College. I
15 took winter interims and summer interims. I was only home at
16 Mountain Park for a short period of time for Christmas and
17 short period of time in the summers. I have a minor in bible
18 also from Crown College.

19 Q. Now, I believe you testified on direct that you have
20 three different things that you're trying to instill in these
21 students: No. 1, biblical self image; No. 2, team work; and
22 No. 3, Christian values. Is that correct?

23 A. Yes, sir, those are three things we definitely try to
24 instill in our students.

25 Q. Are you trying to provide these students with life

1 skills so they'll be able to successfully integrate into
2 society?

3 A. Yes, sir, we are.

4 Q. Are these students given any training on how to handle
5 money?

6 A. Yes, sir, they are.

7 Q. Are they allowed to have any money in their possession?

8 MR. BRIGGS: Objection, Your Honor, we went through
9 this yesterday.

10 MR. STILLEY: I'm asking about --

11 THE COURT: Hold on.

12 MR. STILLEY: I'm asking about the nature of the
13 training program that they have. It's in response to the
14 testimony on direct.

15 THE COURT: What testimony on direct about money?

16 MR. STILLEY: About what kind of things that they
17 are trying to instill in these students. They are saying
18 they are trying to teach life skills.

19 THE COURT: I'm sustaining that.

20 BY MR. STILLEY:

21 Q. And I believe you also testified that Mountain Park is
22 a college preparatory school?

23 A. We strive to provide a college preparatory diploma.

24 That is what we like to see our students once they graduate,
25 that's what we like to see them reach that goal in high

1 school education. We certainly have diplomas that provide or
2 they can obtain if they do the work college preparatory as
3 well as honors diplomas.

4 Q. Do you keep statistics on how many students graduate
5 from Mountain Park and go on to college?

6 A. If there are, I don't have personal knowledge of it.

7 Q. Now, we saw a schedule. I'll get that back out here.
8 Now, you talked about the Mountain Park Baptist Boarding
9 Academy schedule, correct?

10 A. Yes, sir, I did.

11 Q. But you don't have any personal knowledge about the
12 Palm Lane -- the schedule at Palm Lane Academy, correct?

13 A. That is correct.

14 Q. When is the first time that you saw a document of this
15 nature, saw a schedule such as this sample daily schedule?

16 A. Oh, I can't give a date.

17 Q. Do you know when this document was created?

18 A. We've had it for a long time. I don't remember the
19 exact date that it was put in pen and paper.

20 Q. Did you play a part in the creation of this schedule?

21 A. No, sir, Brother Gerhardt -- I don't know who did it.
22 I would assume Brother Gerhardt probably created the
23 schedule.

24 Q. Okay. And when did you first see it?

25 A. I've already stated I don't remember the first time I

1 laid eyes upon this particular schedule.

2 Q. Has it been less than a year?

3 A. This particular schedule probably has been less than a
4 year. We used to wake up at six o'clock and not 5:30.

5 Q. Less than six months?

6 A. No, sir, not less than six months.

7 Q. Now, the first thing here, let's look at the Monday
8 schedule. The first thing appears to indicate that a student
9 would be allowed 45 minutes for personal hygiene. Is that
10 true?

11 A. Yes, sir, that's very true.

12 Q. And what are they allowed to do during this period of
13 time?

14 A. I stated on direct that, and I'll restate once again
15 for the jury, this time is for a young man to brush his
16 teeth, shave his face, iron his clothes, do what every
17 individual in this room had to do this morning before they
18 got in their vehicle. The typical morning chores that just
19 about every person does in the morning time.

20 Q. Is it your testimony that the student is allowed to
21 allocate this time as the student sees fit?

22 MR. BRIGGS: Objection, Your Honor, I'm going to
23 object to the relevance grounds.

24 THE COURT: Sustained. Counsel, come up.

25 (The following proceedings were held at the bench

1 and outside the hearing of the jury:)

2 THE COURT: One has to look at this procedure as a
3 play.

4 MR. STILLEY: Certainly.

5 THE COURT: And like plays and poems, there are
6 themes.

7 MR. STILLEY: Right.

8 THE COURT: You don't seem to have one when you're
9 dealing with someone, and you start asking them questions and
10 you just go down some road, and if something pops up, that's
11 all good. You must have a theme. I mean, please. We must
12 finish this within our lifetimes. You know, and when they
13 start asking about did they have discretion about when to
14 brush their teeth. I mean, come on. Only thing you could
15 even show with that even if you could, what does that have to
16 do with employment or battery? Nothing. You best get a
17 theme going with what you're doing. You have to have a theme
18 in mind as a producer of a play. See, you're trying to
19 produce a play and show it to them. And you got no theme, so
20 you got no play.

21 Where are you going with this? What about the teeth
22 brushing? So think about that. We're talking about it in
23 this little situation here about the personal hygiene time.
24 But you need to think about it overall in terms of what
25 you're doing so we can finish this rather than you just

1 asking something.

2 MR. STILLEY: Basically what they are testifying
3 through this document, they are testifying that a student has
4 45 minutes to go to the bathroom, to shower, to shave, brush
5 their teeth, all the things that they need to do. I just
6 want him to say that the students have this opportunity to
7 use this time as they need and see fit to use it.

8 THE COURT: Please. No, no, no. We're not going
9 there, please. We're not going there. You're wasting my
10 time.

11 MR. STILLEY: I would be done if I just got that one
12 answer.

13 THE COURT: I'm not worrying about you being done
14 with this little answer. I'm worrying about you being done
15 with the whole case, because you all told me three days. You
16 see what I'm saying. And I told this jury. You're worried
17 about something little. I'm worried about the big picture.
18 You're worried about pennies, I'm worried about dollars. You
19 got it?

20 MR. STILLEY: Well --

21 THE COURT: Well, then get with it. Bye.

22 (The following proceedings continued within the
23 hearing of the jury:)

24 BY MR. STILLEY:

25 Q. Now, you told about times that the kids would get to go

1 fish; is that correct?

2 A. Yes, sir. I'm the fish addict, and when bass start
3 striking, it just -- we go out and catch fish.

4 Q. And how often do the students get to do this?

5 A. About twice a week.

6 Q. Twice a week. And what's the season for that?

7 A. Right now we're catching them quite a bit. Every time
8 we go out, we catch about 15 or 20.

9 Q. Would that be about February to November?

10 A. You know, Missouri weather changes from day to day, so
11 whenever we have a beautiful sunny day and the wind is not
12 blowing, we get out and try to catch some fish.

13 Q. How many fishing poles does Mountain Park have for the
14 students?

15 A. Boy, most the times students provide their own fishing
16 poles. But I think we have at least 40 fishing poles, rods
17 and reels. Mountain Park, myself with my own personal money
18 has went out and bought lures and things for the boys so they
19 can use to have things to fish with. They have a good time
20 going and digging up worms. That's one of their favorite
21 things to do in the afternoon before it rains. It seems like
22 the worms just know when they come, and the boys just love
23 digging them up. So we have a lot of fishing poles, a lot of
24 lures, a lot of worms.

25 Q. Let's move on to sports. About how often do the

1 students get to participate in sports?

2 A. Once a week. If we're not fishing, we're playing
3 sports. If it's an activity day that we're going to play day
4 so to speak, if we don't fish, we'll go and play basketball,
5 softball. And we built a nice sand volleyball pit, and we
6 play sand volleyball.

7 Q. So a couple times a week?

8 A. Yes, a couple times a week.

9 Q. An hour or two each time?

10 A. Well, it would be the same as if you look on the
11 schedule, you see from 2:30 it's very well and very plain.
12 And we've seen it the whole time, from 2:30 till five o'clock
13 it says work or sports. And if we're not working, we take
14 from 2:30 to five o'clock to play the sports.

15 Q. Now, isn't it true that the students are not allowed to
16 keep journals?

17 A. No, sir, that is not true.

18 Q. Students are allowed to keep journals?

19 A. Yes, sir, they do have journals.

20 Q. Are they allowed to keep a journal at the time they
21 spent at various activities?

22 A. I guess I don't understand exactly your question.

23 Q. Well, if a student wishes to keep a log that records
24 how much time they spend at work activities as opposed to,
25 say, sports or fishing, are they allowed to do that and keep

1 that record?

2 A. I suppose that question would need to be directed to
3 Brother Gerhardt. He would be the one that would ultimately
4 decide.

5 Q. You have personal knowledge of the answer to that, do
6 you not?

7 A. Personal knowledge of the answer? I gave you my
8 answer. I don't understand.

9 Q. Isn't it true that you yourself had punished students
10 for keeping a journal?

11 MR. BRIGGS: Objection, Your Honor, this is outside
12 the scope of direct. It's also collateral source.

13 MR. STILLEY: Your Honor, they are the ones that are
14 complaining about lack of sufficient record of time spent on
15 work.

16 THE COURT: Don't overdo it.

17 MR. STILLEY: Certainly, Judge.

18 THE COURT: I understand. Overruled. You may
19 answer.

20 A. Would you please restate the question one more time for
21 me?

22 Q. Isn't it true you yourself have disciplined students
23 for having kept a journal or a log of things and activities
24 they have been involved in?

25 A. No, sir, that is not correct. Absolutely not correct.

1 Q. And you're positive of that, correct?

2 A. I am absolutely positive that is not true.

3 Q. Now, when it's time to do work, do you teach efficiency
4 at work?

5 A. Certainly. I think efficiency is very important. If
6 it's worth doing, it's worth doing right is our opinion.
7 There's no point in having to rewash a vehicle because you
8 didn't wash it right the first time. And so efficiency,
9 110 percent, boy, that's very important in doing a job.

10 Q. So when you have the students haul wood, you have those
11 students haul it in the most efficient manner that is
12 reasonably possible, correct?

13 MR. BRIGGS: Your Honor, I'm going to object at this
14 point. This is outside the scope of direct.

15 THE COURT: Sustained.

16 BY MR. STILLEY:

17 Q. You also said that some people were given work for
18 corrective reasons, correct?

19 A. Yes, sir, that is correct.

20 Q. And what kind of reason might be -- strike that. What
21 might cause a student to be assigned corrective work?

22 A. That is something that's -- if you'll allow me to say
23 very difficult to answer, for the fact that it's not
24 something you do one thing the first time and you
25 automatically get put on maybe a work detail. It may become

1 after warning after warning after warning after previous
2 corrections may have been made, and it's one of the last
3 things. So I can't say you do this, this is what happens.

4 Q. Okay. How long can the corrective work assignment be?

5 A. Very subjective question. I mean, it's depending on
6 the individual.

7 Q. Can it be a month?

8 A. Again, it's very subjective.

9 Q. Six months?

10 A. Once again, it can be very subjective.

11 Q. So it's possible that some of these students that are
12 put on work for corrective purposes for a whole six months?

13 A. No, sir, I would say that's not possible.

14 Q. Are you sure that's not possible?

15 A. Yes, sir, I'm very positive that's not possible.

16 Q. Now, did I understand you correctly when you were
17 testifying on direct to say that you simply present the
18 gospel to the students and let them decide to accept or
19 reject it?

20 A. You can't make anybody trust Christ.

21 MR. BRIGGS: Your Honor.

22 THE COURT: He may answer that. He's answered it.

23 A. You can't make -- it's not like a flip top, you just
24 flip the head open and pour it in. It's a personal decision.
25 You can't force anybody to trust the Lord as their personal

1 savior. It's impossible. It's completely impossible.

2 Q. Do you ever take away King James version bibles because
3 the Mountain Park disagrees with the content of that bible?

4 MR. BRIGGS: Objection, Your Honor, this is outside
5 the scope of direct.

6 THE COURT: Sustained.

7 MR. STILLEY: Your Honor, may we approach? I've got
8 another question. Okay.

9 BY MR. STILLEY:

10 Q. From time to time you have students who are not of the
11 Christian faith, correct?

12 A. Yes, sir, that is very correct.

13 Q. Are they compelled to participate in Christian
14 religious activities?

15 MR. BRIGGS: Objection, Your Honor, it's 404(b)
16 objection.

17 THE COURT: Sustained.

18 Q. I noticed in the handbook, did I not, on your direct
19 examination that there is a clause in the handbook that
20 Mountain Park has a policy of racial nondiscrimination; is
21 that correct?

22 A. I don't know if you notice that or not.

23 Q. Do you recall if that document -- do you know if that
24 policy is in Mountain Park's handbook?

25 A. Non -- I'm sorry, restate it for me, please.

1 Q. Racial nondiscrimination.

2 A. Yes, sir, that is correct, that is our policy.

3 Q. Okay. Do you know what that policy calls for?

4 MR. BRIGGS: Objection, Your Honor, relevance.

5 THE COURT: Sustained.

6 MR. STILLEY: Your Honor, can I approach on this?

7 THE COURT: You need to ask yourself. You know,
8 it's like I'm getting tired, tired, tired, tired. Does it
9 have anything to do with battery? Does it have anything to
10 do with the Fair Labor Standards Act in terms of employer/
11 employee? And now we've sort of gone into curriculum as to
12 whether or not something is work or curriculum, okay. So
13 that's it. When you start asking all these questions about
14 religion, race, please, you step across the line. I've
15 talked to you enough about it. I'm getting tired, real
16 tired.

17 BY MR. STILLEY:

18 Q. Now, you talked about trying to instill in these
19 students cleanliness; is that correct?

20 A. Yes, sir, very important is cleanliness.

21 Q. And you say that is because the human body is the
22 temple of God?

23 A. Yes, it is.

24 Q. Does Mountain Park or its employees ever force students
25 to eat foul food?

1 MR. BRIGGS: Objection, Your Honor, Rule 16 --
2 613(b).

3 THE COURT: Sustained. Are you finished? I'm going
4 to cut your examination off.

5 MR. STILLEY: Judge, I'm --

6 THE COURT: You will learn the easy way and a hard
7 way, you know. I keep telling you does that have anything to
8 do with this battery situation that's claimed, the pushing or
9 shoving? Does it have anything to do with this education or
10 are you trying to do something for sympathy or prejudice?
11 See. Sooner or later when you keep crying wolf, please. You
12 know, as they say, if you got something, come on with it.

13 BY MR. STILLEY:

14 Q. Didn't you testify on direct examination that you did
15 not slam the plaintiff into any counter?

16 A. Yes, sir, I never slammed the plaintiff against a
17 counter.

18 Q. And didn't you also testify that you don't slam any of
19 the students against counters or against other solid objects?

20 A. Yes, sir, that is correct.

21 Q. And you don't push them into other hard objects, do
22 you?

23 A. No, sir, I do not.

24 Q. And you've never seen your father do that, have you?

25 MR. OLIVER: Oh, come on, Judge.

1 MR. BRIGGS: Your Honor.

2 THE COURT: Sustained.

3 MR. OLIVER: I apologize, Your Honor, but that
4 pushed me beyond. I object. This is just --

5 THE COURT: I understand. Are you finished with
6 this witness?

7 MR. STILLEY: No, Judge. I'm almost finished.

8 THE COURT: You better come on with some questions
9 because I'm going to cut you off. You keep stepping outside
10 the line. Sooner or later there is a penalty, you know.
11 They keep blowing the whistle and once you get so many fouls,
12 they just take you out of the game. You see what I'm saying?
13 I'm tired of telling you.

14 MR. STILLEY: Judge, I'm just simply trying to
15 cross-examine on the matters that were testified on direct.

16 THE COURT: Matters that you're interested in.

17 MR. STILLEY: Well, if they don't want things
18 testified --

19 THE COURT: I'm telling you what we're here for, and
20 I'm tired of telling you what we're here for.

21 BY MR. STILLEY:

22 Q. Mr. Gerhardt, have you ever forced any of the students
23 to work late into the night?

24 A. No, sir, I've never forced anyone to work late into the
25 night.

1 Q. Have you ever forced any student to work when the
2 student said they were too tired and could no longer work?

3 A. I probably have encouraged someone to -- who did not
4 want to work to keep on working, yes, I probably have.

5 Q. Did that include touching or pushing that student?

6 A. Probably helping them off -- helping them get up the
7 hill with a wheelbarrow, helping them carry a log by getting
8 in front of them, and helping them hold it up with their
9 hands. I probably, yes, have touched a student before in
10 assisting them to get the job done.

11 Q. Okay. In pushing -- in those touchings, have you ever
12 caused that student to have a serious injury?

13 A. No, sir, I never have.

14 Q. Have you ever seen that happen?

15 A. No, sir, I never have seen that happen.

16 Q. When you first started working for Mountain Park, did
17 you keep time records?

18 A. No, sir, I have never kept a time record.

19 Q. Do you know anybody at Mountain Park who has ever kept
20 a time record?

21 A. As it was stated previous in the courtroom, the only
22 ones who have time records are the driving staff. There's a
23 clock. As soon as you walk in the door, they clock in and
24 they clock out. Those are the only ones that have time
25 records.

1 Q. And what kind of staff is that? Oh, the driving staff?

2 A. Yes, sir.

3 Q. That means people who drive in, who live nearby but
4 drive in to Mountain Park?

5 A. Yes, sir, that is correct.

6 Q. Have you ever taken someone off of a work detail
7 because there were insufficient orientation guides to watch
8 over that person?

9 A. I don't understand your hypothetical situation. I
10 don't understand.

11 Q. Say you got a student who is working. Say they are
12 hauling wood. And have you ever taken a student off of a
13 wood hauling job and put them somewhere else because you
14 didn't have enough orientation guides to oversee this person
15 hauling the wood?

16 MR. BRIGGS: Your Honor, may we approach for a
17 moment?

18 THE COURT: Yeah, come on.

19 (The following proceedings were held at the bench
20 and outside the hearing of the jury:)

21 THE COURT: Go ahead.

22 MR. BRIGGS: Your Honor, at this point I want to
23 interpose an objection. This is inappropriate. It was not
24 asked on direct. The fact that he's trying to inquire
25 whether randomly at some point in time he may have taken a

1 student off work detail because somebody wasn't in a position
2 to watch him doesn't relate to Mr. Blair's claim of a Fair
3 Labor Standards Act violation.

4 THE COURT: I agree. You have not seemed to have
5 gotten my message. I think I'm going to have to take some
6 severe measures. You keep asking questions beyond the scope.
7 You keep asking questions about things that are just too far
8 prejudiced or sympathy or, you know, did you -- did his
9 father ever push somebody. I mean, please, you know. Did
10 they ever take the King James version of the bible because
11 they disagreed.

12 I'll tell you what you do, maybe this evening you're
13 going to have to submit your questions to someone. I told
14 you yesterday about the pitching rotation. But I'm ending
15 your examination right now because you cannot abide by this
16 court's ruling. I'm ending your examination of this witness.
17 You understand. And if you have any more questions of this
18 witness, you submit them in writing to me and I'll approve of
19 them first. Because you didn't get the idea when I told you
20 about the pitching rotation. And you keep violating my
21 rulings about what the issues are in this case. You don't
22 seem to get the message.

23 MR. STILLEY: Can I make a record about the reason
24 that I wanted to present this testimony?

25 THE COURT: No. We are not making any further

1 record. I have talked to you about this. I'm tired of you
2 coming up here. You sit down and we'll go -- do you have any
3 redirect of this witness?

4 MR. BRIGGS: No, Your Honor.

5 THE COURT: Fine. You sit down. If you have any
6 more questions of this witness, you write them down and I'll
7 approve them first. Call your next witness.

8 MR. STILLEY: I believe the Eighth Circuit says that
9 you're entitled to make a record of the reasons. I'd like to
10 make a record of reasons.

11 THE COURT: I'll tell you what, as far as I'm
12 concerned there is no good reason about asking about his
13 father pushing somebody. There is no good reason about
14 taking the King James version bible because they disagree
15 with it. So forget it. Forget it. I don't need a reason.

16 MR. STILLEY: Can I make a record?

17 THE COURT: No, not on that. No.

18 (The following proceedings continued within the
19 hearing of the jury:)

20 THE COURT: Nothing further of this witness?

21 MR. BRIGGS: We have nothing further, Your Honor.

22 THE COURT: Very well. Mr. Gerhardt, you may be
23 seated. Call your next witness.

24 MR. BRIGGS: Your Honor, we'll call Robert O'Brient
25 to the stand.

1 ROBERT O'BRIENT,

2 Having been first duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. OLIVER:

6 Q. Would you please state your name to the ladies and
7 gentlemen of the jury.

8 A. My name is Robert Joe O'Brient.

9 Q. And what's your professor or occupation, sir?

10 A. I'm associate pastor at Palm Lane Baptist Church.

11 Q. And how long have you had that job?

12 A. Two years.

13 Q. Before that what did you do, Mr. O'Brient?

14 A. I was the principal of the Academy at Mountain Park
15 Baptist Boarding Academy.

16 Q. Now, what is the principal, what does the principal do?

17 A. Mainly what I did is I supervised the various learning
18 centers. At that time I believe we had five different
19 learning centers. And kept up with school records.

20 Q. I'm not going to spend much time on this, but what is a
21 learning center? That's been mentioned a couple of times.
22 It's in effect where students do their work?

23 A. It's actually a room where the students do their work.
24 We call it a learning center instead of a classroom.

25 Q. You were in charge of that?

1 A. Yes, sir.

2 Q. At Mountain Park?

3 A. Yes, sir.

4 Q. When did you go to Palm Lane?

5 A. We went to Palm Lane, my wife and I, we went to Palm
6 Lane in January 2002.

7 Q. Now, at Mountain Park as a part of your job did you
8 supervise the academic education of the students?

9 A. Yes, sir.

10 Q. And what types of education did Mountain Park make
11 available to the students?

12 A. As far as subjects, just the basic math, English,
13 social studies, science, bible electives, things of that
14 nature.

15 Q. And what kind of -- let me show you from Plaintiff's
16 Exhibit 9. What kinds of diplomas were available?

17 A. There were actually four levels of diploma that we
18 offered; vocational preparatory, general diploma, the college
19 prep, and the honors diploma.

20 Q. And then what's Category B?

21 A. Vocational prep. This is where students who -- a
22 student has to work up at least until the ninth grade level
23 in each of the subjects and accumulate the required state
24 requirements for credit in order to graduate from high
25 school.

1 Q. And did you teach outside the classroom?

2 A. Yes, sir.

3 Q. And did you teach life skills outside the classroom?

4 A. Yes, sir.

5 Q. Well, how does that happen? How did that happen at
6 Mountain Park?

7 A. As far as life skills, in teaching the students as
8 we've talked about before in cleaning up their area, keeping
9 themselves neat and clean, and then also in their work in the
10 afternoons when they would go out, we would do everything we
11 could to teach them just a good solid work ethic.

12 Q. Why do you do that?

13 A. Because that's something that they can carry with them
14 the rest of their lives. If, you know, thank the Lord for
15 our good country, and if you work hard you can at least eat,
16 support your family. And if you're working most of the time,
17 you're staying out of trouble.

18 Q. And now when these children come to you, are these
19 skills that you teach out of the classroom skills that these
20 young, troubled young people have?

21 A. Very rarely. Now, I have seen some students come in
22 who have, you know, they may not have known a particular
23 thing that we were trying to do, but they had learned to
24 work. But that's very rare. Most of the time -- I'm not
25 saying that anyone's never tried, but they just not picked up

1 on the good solid work habits.

2 Q. Now, you went to from Mountain Park to Palm Lane,
3 correct?

4 A. Yes, sir.

5 Q. What was the mission of Palm Lane?

6 A. The mission at Palm Lane is, first of all, to see that
7 a student come -- to do everything we can to encourage a
8 student to come to a right relationship with God through
9 Christ. And then our secondary goal is to provide a good
10 academic education for the students.

11 Q. And in the carrying out of that mission, just tell the
12 ladies and gentlemen of the jury how you accomplish those
13 missions.

14 A. Well, when the students first come in they are placed
15 with an orientation guide which is a student who has shown a
16 desire to help someone as they've been helped. Normally
17 someone who has been there at least six months and would be
18 able to help the students. So that when they first come in
19 they have someone who has, you know, recently gone through
20 some similar -- some similar circumstances, you know, coming
21 in to a new place, definitely someone who feels for them or,
22 you know, would know what they are feeling to help them get
23 acclimated to what's going on.

24 And then also to, you know, when they first come in
25 as far as educational, that we give the student a diagnostic

1 test which determines their performance levels of curriculum
2 or perhaps any remedial work that they may have to do. It
3 identifies that.

4 Q. So you start off with an orientation guide to show by
5 example; is that right?

6 A. Yes.

7 Q. And do you work as groups? Other than in the classroom
8 do you work as groups, teams?

9 A. Yes, sir, we do.

10 Q. And why do you do that?

11 A. Well, in order to teach teamwork.

12 Q. What else does a group allow, if anything? Is that the
13 primary thing? Any leadership skills arise out of that?

14 A. Well, certainly there are leadership skills that arise
15 out of that because those who work harder are showing the
16 others who are not perhaps putting as much effort into it as
17 they could, you know, that it won't kill them to do some
18 work.

19 Q. Okay. Now, we've shown -- the jury has seen
20 Defendants' Exhibit C, which is a sample schedule from
21 Mountain Park. Is the schedule -- let me show you Exhibit D.
22 Is the schedule at Palm Lane essentially the same?

23 A. Yes.

24 Q. You typed this schedule up for me, did you not, or had
25 it typed for me, sent it to me in a letter?

1 A. It's possible, yes.

2 Q. And is this fairly representative of what the students
3 do? I'm not saying every day, but day in day out on a
4 Monday?

5 A. Yes.

6 Q. The differences are Wednesday night, right, because
7 they go to church, correct?

8 A. Yes, sir.

9 Q. Second difference is Friday night?

10 A. Yes, sir.

11 Q. And on Friday night there are movies, correct?

12 A. Yes, we get an old movie out, yes.

13 Q. And then Saturdays are different?

14 A. Yes, sir.

15 Q. And then Sundays are different, correct?

16 A. Yes.

17 Q. There are no work or --

18 A. Not on Sunday.

19 Q. -- academic programs on Sunday?

20 A. Not normally.

21 Q. And is the same thing true of Saturday at Palm Lane,
22 normally not any work activities?

23 A. You mean not any school work activities?

24 Q. There's no school work, correct?

25 A. Yes, sir.

1 Q. But is there work or other activities?

2 A. Yes, work or play.

3 Q. Every afternoon are there either work or sports roughly
4 in the 2:30 to five o'clock range?

5 A. Yes.

6 Q. Now, Palm Lane, I guess, is that period pretty regular
7 or does the weather ever interfere?

8 A. Well, in the afternoons in the summertime certainly we
9 get a good shower.

10 Q. Now, of what importance to Palm Lane in the performance
11 of its ministry is this roughly 2:30 to five o'clock, and
12 what you do on Saturday afternoon? How do the tasks, the
13 fixing, the painting the fence, that's true, isn't it?

14 A. Yes, sir.

15 Q. Painting the fence, how do those tasks and job fit in
16 the performance of the ministry of Palm Lane?

17 A. Well, speaking from personal experience, and many years
18 ago working with Brother Wills, Brother Wills had an academy
19 in Mississippi I was a part of. And he taught me many things
20 just watching him work and him being sure that I did. And
21 then, you know, just having the opportunity to carry that
22 same type of thing on to the students. It's very important
23 for them to see us work and for us to be working there with
24 them. And for us to show, you know, enough concern that
25 we're not only just going to give them a task and let them

1 work around it, but continually come back to them and say,
2 you know, okay, this is how you do this, you know how to do
3 this, and help them. You know, closely supervise work,
4 that's important.

5 Q. You heard Jordan Blair say that among other things,
6 writing lines, that one of the things he learned is how to
7 weld and use a sander, right?

8 A. Yes, sir.

9 Q. Are those the kinds of skills that kids pick up as a
10 part of this work play time?

11 A. Yes, sir, that's true.

12 Q. We don't give them or pretend to give them a vocational
13 certificate in welding?

14 A. No, sir.

15 Q. Or belt sanding or anything else?

16 A. No, sir.

17 Q. But they do get credit for that, do they not, by
18 getting credits for physical education?

19 A. Yes, sir.

20 Q. If you look on the screen from page 65 of the Palm Lane
21 handbook, they get two hours worth of credit for physical
22 education; is that correct?

23 A. Yes, sir.

24 Q. Does that credit include all these things that are done
25 in the afternoon or on Saturday?

1 A. Yes, sir.

2 Q. Now, let's just talk about a couple of these. There
3 are some kind of fences down at Palm Lane, right?

4 A. Yes, sir.

5 Q. And they need to be painted from time to time?

6 A. Yes, sir.

7 Q. Do the students do that?

8 A. Yes, sir, they do.

9 Q. Do the staff do that along with them?

10 A. Yes, sir.

11 Q. Does that fence -- do you sell any of that fence or put
12 it in interstate commerce or anything?

13 A. No, actually the fence that was painted was a metal
14 pipe fence that was there when we came on the property. And
15 the property needed some work when we came. And we just
16 improved the looks of the place. Instead of having a rusty
17 fence, we wire brushed it and primed it and painted it with
18 white Rustoleum paint just to improve the looks of the place.
19 And it's not finished yet by the way.

20 Q. Do kids -- in addition to this work when children don't
21 follow the rules, is there a plan, a program of protective
22 activities undertaken?

23 A. Nothing written. When you say a plan, nothing written
24 in stone. Nothing -- we try to work with the students as
25 individuals.

1 Q. How do you correct it?

2 A. Let's get up and do this.

3 Q. So verbals first?

4 A. Yes, sir. Yes, sir. If they were to refuse to work,
5 which I don't recall personally myself, I don't recall any
6 student ever just throwing his tools down and refusing to
7 work with me or with anyone else. As long as they were, you
8 know, as long as everybody was in there doing it.

9 Q. Well, does work sometimes become corrective?

10 A. Yes, sir.

11 Q. All right. First verbal correction and encouragement,
12 correct?

13 A. Yes, sir.

14 Q. What's writing lines?

15 A. Writing lines, most of the time, you know, we try to
16 make a subject of the line match whatever trouble they've
17 been having.

18 Q. So if there is difficulty -- explain to the jury what
19 happens when you have to write a line. Somebody messes up.

20 A. Let's say they are having, you know, a continual
21 problem keeping their area clean and we're having to
22 constantly work with them about keeping their area clean.
23 You know, we may give them a line saying something, you know,
24 while at Palm Lane I will do my utmost to keep my personal
25 area clean. And, you know, something like that maybe 250

1 times. And we give them three days to do that. If they
2 don't have that done in three days, the lines are doubled.

3 And what this does, it infringes on their free time.
4 So while others are being able to enjoy play time and free
5 time, you know, they are not able to do that. And, you
6 know --

7 Q. Brother O'Brient, do these children understand that
8 every action has an equal and opposite reaction?

9 A. We do everything we can to help them understand that,
10 yes.

11 Q. Then do you try to teach them that actions have
12 consequences?

13 A. Yes, sir.

14 Q. And is that both good and bad consequences?

15 A. Right, yes, sir, both merit and demerits.

16 Q. And does work sometimes assigned as evidence of the
17 need for corrective action give people the opportunity to
18 think about what they've done?

19 A. Yes.

20 Q. Now, sir, does Palm Lane have any product other than
21 the young people that it tries to lead to Christ and restore
22 to society?

23 A. No, sir, we don't produce anything.

24 Q. You buy and sell cattle?

25 A. No, sir.

1 Q. You buy and sell horses?

2 A. No, sir.

3 Q. Provide irrigation?

4 A. No, sir.

5 Q. Did you ever dig a pond?

6 A. Personally, no, sir.

7 Q. Did you ever have a pond dug down in Palm Lane?

8 A. I never gave the direction to dig a pond. The boys
9 were out close to their campground, which is --

10 Q. Explain the campground.

11 A. The campground is a place where they put up a tent and
12 sometimes on the weekend when the weather was right we let
13 them go out and sleep over night in a tent and, you know,
14 build them a fire and have, you know, a weanie roast and
15 sleep out. And my understanding of it, of course, this is
16 hearsay, but my understanding is --

17 Q. If it's hearsay, don't tell it.

18 A. Okay. But the pond was being dug more for the
19 entertainment of the boys than is it for anything else.

20 MR. STILLEY: Objection, I move to strike on the
21 grounds no personal knowledge.

22 A. I knew that the pond was being dug. I'm sorry.

23 THE COURT: Overruled.

24 BY MR. OLIVER:

25 Q. Now, sir, just real briefly, Mr. O'Brient, in the

1 absence of the work in the afternoon, could Palm Lane
2 adequately perform its mission as you've described to save
3 these children?

4 A. Not on a consistent basis, no, sir.

5 Q. Is the work as much a part of the mission as the
6 education?

7 A. Yes.

8 Q. Is it as much a part of the overall mission of trying
9 to lead these children to Christ through example and exposure
10 to the Holy Spirit?

11 A. To show them as far as the spiritual part of it,
12 whether they believe, trying for whatsoever you do is all for
13 the glory of God, that's a Christian lifestyle. And to show
14 them an example of a Christian lifestyle, which is a
15 desirable thing, but certainly having Jesus Christ as your
16 savior, giving your life to God, that is something they
17 should desire.

18 Q. And if they don't accept Christ, what value does the
19 morning education and the afternoon education have to them?

20 A. They have, you know, if they don't accept Christ, the
21 second part of our mission does come in. And they do have a
22 good opportunity for college credit diploma. And if they are
23 able to attain that, a good solid foundational education, and
24 hopefully at least knowing how to work and when to work.

25 Q. Are these skills these kids have when you get them?

1 A. Very rarely. We have had a few, but very rarely. They
2 would be the exception, not the rule.

3 Q. Are these the skills you're trying to impart --

4 A. Most definitely.

5 Q. -- when they go back into real life?

6 A. Most definitely.

7 MR. OLIVER: Thank you. You may inquire.

8 CROSS-EXAMINATION

9 BY MR. STILLEY:

10 Q. So you're the person that typed up the schedule for
11 Palm Lane, correct?

12 A. Would you show me that schedule again, please.

13 Q. Certainly.

14 A. No, sir, I did not type this. I did not.

15 Q. You had it typed up, correct?

16 A. No, sir, I did not have it typed up.

17 Q. How did you come in possession of this schedule?

18 A. I really don't believe I possessed a copy of this
19 schedule.

20 Q. Did you not testify that you sent a copy to your
21 attorney?

22 A. No, sir.

23 Q. You didn't?

24 A. I did not testify that I sent this -- a copy of this
25 particular schedule to the attorney, no, sir.

1 Q. Did you send a copy of some schedule?

2 A. Yes, sir, I did.

3 Q. And is that schedule different than this schedule?

4 A. Not in any substantial way, no, sir.

5 Q. Okay. Now, this other schedule that you did send, did
6 you type it up?

7 A. Yes, sir, I did.

8 Q. And when did you do that?

9 A. It's been about a year ago.

10 Q. And you did it specifically for this litigation,
11 correct?

12 A. As far as I can remember, yes, sir.

13 Q. And you had worked for Mountain Park or Palm Lane for
14 how long?

15 A. We began working with Mountain Park -- the first time
16 that we worked with Mountain Park, my wife and I, 1987 to
17 1990. And then from 1996 to either 2001. We went to Palm
18 Lane in the year 2002 and we've been there since.

19 Q. Did you say something on direct examination about a
20 life program?

21 A. Life program?

22 Q. Maybe I misunderstood you. A life skills program or
23 not?

24 A. No, sir, I did not use those words.

25 Q. What words did you use?

1 A. About what, sir?

2 Q. About teaching life skills to students.

3 A. That we felt it was important that they had good life
4 skills. I believe I said that, I don't know but I'll say
5 that now.

6 Q. You have no formal program for that teaching, do you?

7 A. It is part of our mission and part of our program to
8 teach our students good life skills which include teaching
9 themselves clean and a good work ethic. Yes, sir, that's
10 part of our program.

11 Q. But it's not a formal part of your program, is it?

12 A. Yes, sir, it is a formal part of our program.

13 Q. Do the students get credit for that?

14 A. Not school credit, not academic credit.

15 Q. And you don't have any certified instructors.

16 A. Instructors in what, sir?

17 Q. In life skills. What do you call it? You tell the
18 jury, what do you call this program that you're talking
19 about?

20 A. Our overall program is both an academic and life skills
21 program I suppose you could say. I hold a teacher's
22 certification if you're talking about certifications.

23 Q. Well, that's not for the academic in this life skills.
24 Do you have any separate --

25 MR. OLIVER: Your Honor, I object.

1 THE COURT: Let's not argue with the witness.

2 MR. STILLEY: What?

3 THE COURT: Let's not argue. Go ahead. Just ask
4 your question.

5 MR. STILLEY: Certainly.

6 BY MR. STILLEY:

7 Q. You don't have any certified instructors who are
8 certified in a program of life instruction or substantially
9 the same as life instruction, correct?

10 A. Sir, I don't know what you mean by life instruction.

11 Q. And you don't have a certified program of training for
12 life skills or life instruction, correct?

13 A. What do you mean by certified, sir?

14 Q. Well, certified as in an approved program or approved
15 by some educational regulatory body as being a satisfactory
16 program for providing an education of that sort.

17 A. Are you asking us -- are you asking me about
18 accreditation, sir?

19 Q. I'm asking you if there's any certification on the
20 program concerning the teaching of a life skills.

21 A. I don't understand the question, I'm sorry.

22 Q. But you can't testify that you do have any such
23 certification, correct?

24 A. Not understanding what you're talking about, sir, I'm
25 just not comfortable in answering yes or no. I don't

1 understand what you're talking about.

2 Q. Are your students taught things like welding or sanding
3 or plumbing at Palm Lane?

4 A. They are taught how to do those things, yes, sir.

5 Q. But you don't have any certified instructors, do you?

6 A. To teach those particular things?

7 Q. Correct.

8 A. Not to my knowledge, no, sir.

9 Q. And you have no certified program in any of those
10 courses of instruction, do you?

11 A. Once again, sir, I do not understand what you mean by
12 certified.

13 Q. If you don't understand the question, just say I don't
14 understand the question.

15 A. I don't understand the question.

16 Q. And Palm Lane gets no credit for anyone in the courses
17 of welding or plumbing or similar courses, correct?

18 A. That is correct.

19 Q. And I take it that Palm Lane keeps no records of the
20 time that is spent on work as opposed to the time that is
21 spent in sports, correct?

22 A. Correct.

23 Q. Do you have any personal knowledge as to who formulated
24 a policy of not keeping those records?

25 A. A policy of not doing something?

1 Q. Correct.

2 A. There is no policy that I know of.

3 Q. So just -- there's just no policy?

4 A. There's no policy saying that we don't keep records.

5 Q. Okay. Is there any rule at Palm Lane that prohibits
6 any student from keeping a log or a journal?

7 MR. OLIVER: It's outside the scope of direct.

8 THE COURT: I'll allow the question.

9 A. Restate the question, please.

10 Q. Is there any rule at Palm Lane that prohibits a student
11 or limits a student from keeping a log or journal of
12 activities?

13 A. No, sir, there is not. This is not a rule.

14 Q. Are you positive of that?

15 A. As I said, there's not a rule.

16 Q. Okay. Have the students ever been punished for keeping
17 a log or a journal at Palm Lane?

18 A. Not to my knowledge.

19 Q. And if such punishment had taken place, would you have
20 personal knowledge of it?

21 MR. OLIVER: Objection, Your Honor, it's outside the
22 scope. It's other acts.

23 THE COURT: Fine. I'll sustain.

24 BY MR. STILLEY:

25 Q. Now, when the boys went out and painted this fence,

1 that improved the value of that property, correct?

2 A. It improved the looks of it, I don't know about the
3 value.

4 Q. You don't know if that improved the value of the
5 property?

6 A. I'm not an appraiser, sir, I don't know.

7 Q. Okay. Do you have personal knowledge as to who owns
8 the property that this fence is on?

9 A. No, sir, I do not.

10 Q. If you don't mind waiting until I get completed with
11 the question before you answer.

12 A. I'm sorry.

13 Q. The court reporter would appreciate that if you do
14 that. Do you have any personal knowledge of the boys, any of
15 the boys or girls being taken over to Bob or Betty Wills'
16 residence to do work there?

17 A. Yes.

18 Q. Do you know who was benefited by that work? Isn't it
19 fair to say Bob and Betty Wills were benefited by that work?

20 A. Along with the students who volunteered to go, yes.

21 Q. And that work included things like lawn maintenance and
22 polishing the boat and work on or in the house, correct?

23 A. Correct.

24 Q. And is it fair to say all that work benefited Bob and
25 Betty Wills?

1 A. And also training the students, yes, sir.

2 Q. Did you ever get any personal benefit out of work that
3 was performed by the students?

4 A. Other than the satisfaction of seeing them accomplish a
5 job well done, no, sir.

6 Q. They never polished your car?

7 A. No, sir.

8 Q. Never worked at your house?

9 A. No, sir.

10 Q. Do you live on campus?

11 A. Yes, sir.

12 Q. Is your housing provided to you as part of your
13 compensation?

14 A. Yes, sir.

15 Q. Do the students ever come to your house to do lawn
16 maintenance or to clean your house?

17 A. No, sir.

18 Q. Never?

19 A. Never.

20 Q. Oh, on the welding or the plumbing or similar items, is
21 there any formal lesson plan for those matters of
22 instruction?

23 A. Not that I'm aware of.

24 Q. Do you have any personal knowledge as to the source of
25 goods that are procured by Palm Lane?

1 A. What goods are those, sir?

2 Q. Such as food, other items that are used by Palm Lane?

3 A. Yes.

4 Q. Okay. Do you know where they come from as a general
5 rule?

6 A. We get our food from, most of our food comes from Sysco
7 Corporation, they deliver our food. Most of the
8 miscellaneous items that we get for the students comes from
9 Sam's Club, Wal-Mart, Sam's Club, things of that nature.

10 Q. Now, you testified on direct about your disciplinary
11 policy not written in stone, correct?

12 A. Yes, sir.

13 Q. It's not actually written in paper either, is it?

14 A. About most things it's written in the handbook.

15 Q. About most things?

16 A. Yes, sir.

17 Q. But the students are not allowed to have a copy of the
18 handbook?

19 A. Their parents.

20 Q. But not the student?

21 A. No, sir.

22 Q. Isn't it true that Palm Lane makes a choice to do it,
23 that Palm Lane only implement programs with certified
24 programs and certified instructors and formal lesson plans
25 for welding or plumbing?

1 A. Would you restate that, please.

2 Q. Isn't it possible if Palm Lane Academy was so inclined
3 that Palm Lane Academy could institute formal programs with
4 certified instructors, certified programs and formal lesson
5 plans for subjects such as welding or plumbing? Do you
6 understand the question?

7 A. I suppose we could, yes, sir.

8 Q. Now, you said something about the pond digging. And
9 did I understand correctly you said it was for the boys'
10 benefit that the pond was dug?

11 A. That was my understanding, yes.

12 Q. What's the basis of your personal knowledge concerning
13 that?

14 A. My 10-year-old son and my 12-year-old son coming back
15 to the house every day covered with mud was probably one
16 reason I thought it was fun for them.

17 Q. That pond did actually improve the value of that
18 property, correct?

19 A. No, sir, I don't think so. Digging a hole in the
20 ground would not improve the value. Of course, once again,
21 I'm not an appraiser.

22 Q. It didn't reduce the value of the property, did it?

23 A. I don't know.

24 MR. STILLEY: Judge, could I have a moment with my
25 client? Pass the witness.

1 MR. OLIVER: Your Honor, we offer C and D at this
2 time.

3 THE COURT: Any objection?

4 MR. STILLEY: No objection.

5 THE COURT: It's received.

6 MR. OLIVER: We'll briefly -- I tried to zoom
7 something, Judge, and messed up. I was trying to do this too
8 fast, I'm sorry.

9 REDIRECT EXAMINATION

10 BY MR. OLIVER:

11 Q. The word accreditation was mentioned. I call your
12 attention to Exhibit 9 down at the bottom. To your knowledge
13 is Mountain Park accredited, and if so, how?

14 A. Mountain Park is accredited through the Association of
15 Christian Children's Ministries International and Missouri
16 Association of Christian Childcare Agencies and the School of
17 Tomorrow.

18 Q. Okay. Now, it's the same, little bit different down at
19 Palm Lane, is it not?

20 A. Palm Lane is accredited. It's registered with the
21 State of Florida as a Type 2 facility, childcare facility, in
22 accordance with the Florida Statute 409.176. And it is
23 accredited by the Florida Association of Christian Childcare
24 Agency.

25 MR. OLIVER: Thank you very much, Your Honor.

1 THE COURT: Anything else?

2 MR. OLIVER: Not of this witness, Your Honor.

3 Excuse me.

4 RECROSS-EXAMINATION

5 BY MR. STILLEY:

6 Q. Your accreditation only relates to academics, correct?

7 A. No, sir.

8 Q. What does it relate to?

9 A. Palm Lane is accredited a Type 2 childcare facility
10 under statute 409.176 of the Florida constitution.

11 Q. Okay. But that's not an academic matter, is it?

12 A. No, sir.

13 Q. When you told the jury that the program was accredited,
14 what were you trying to tell the jury that was accredited?

15 A. Sir, I did not tell them they were accredited.

16 Q. What did you say?

17 A. About what?

18 Q. About accreditation.

19 A. I don't recall saying anything particularly. I asked
20 you if you were asking me about accreditation.

21 Q. Did you not -- did you not just testify on redirect
22 that Palm Lane had some sort of accreditation?

23 A. I read what was written on the things that were given
24 here.

25 Q. But did you have personal knowledge about what you were

1 reading?

2 A. Yes, sir.

3 Q. All right. Is Palm Lane accredited by -- for academic
4 subjects?

5 A. You're talking about Palm Lane?

6 Q. Correct.

7 A. No, sir.

8 Q. What's -- now, you said something about Florida
9 association -- tell me what specific association you're
10 talking about.

11 A. The Florida Association of Christian Childcare
12 Agencies.

13 Q. Do you know who the principles are in this
14 organization?

15 A. No, sir, I do not.

16 Q. Do you know how that -- now, what does this go by when
17 you just speak in ordinary talking, do you say FACCA or do
18 you say the whole term? You say FACCA?

19 A. Yes, sir.

20 Q. FACCA. How did you come to know that Palm Lane was
21 accredited or had some affiliation with FACCA?

22 A. Well, through our handbook and through discussions with
23 my superiors.

24 Q. What superiors?

25 A. Brother and Mrs. Wills.

1 Q. Did they ever tell you what FACCA is?

2 A. No, sir, I don't think they ever felt the need to.

3 Q. And you don't know who is involved with FACCA?

4 A. I know that the president, I suppose that's his title,
5 the head man, his name is Dr. Ed McClellan.

6 Q. Isn't it true that the Wills have had positions on this
7 board?

8 A. I do not know.

9 Q. You don't have knowledge of that?

10 A. No, sir.

11 Q. Isn't it true that the Wills were involved in creating
12 FACCA?

13 A. I do not think so. I'm almost positive that they did
14 not. FACCA has been existence for many years before the
15 Wills went to Florida.

16 MR. STILLEY: Pass the witness.

17 MR. OLIVER: Nothing further, Your Honor.

18 THE COURT: That's it. Two times around. That's
19 it.

20 THE WITNESS: Thank you.

21 THE COURT: Ladies and gentlemen of the jury, we'll
22 take our afternoon recess at this time. Recall the
23 admonition. Be prepared to return -- well, return to your
24 jury rooms at 25 after.

25 (The following proceedings were held outside the

1 hearing of the jury:)

2 THE COURT: Counsel, let's see what else there is to
3 direct toward this Fair Labor Standards Act situation in
4 terms of witnesses or see if you have anything in response to
5 say.

6 And I don't want to get to you having to write down
7 every question you have to write of every witness,
8 Mr. Stilley, and have to have you bring it in for me to
9 review it, you know. And I don't think I would let the jury
10 see me taking my questions to a 19-year-old and see if he
11 approved of them, you know. Fine. Do what you want to do.
12 Make yourself happy. I'm just saying, I don't know. I don't
13 know.

14 But I'm just saying, don't get to the point where
15 you have -- you know, I told you about Mr. Gerhardt, that
16 ended that. If you have any more, you know what you got to
17 do. So let's not get to that with other people. Okay.

18 MR. STILLEY: Yes, sir.

19 THE COURT: I'm trying to be nice, you know. Tried
20 to warn you. You didn't get the message. So let's get to
21 this part about the Fair Labor Standards Act once I come
22 back. Any witnesses? The defendant, you got some rebuttal
23 on that, let's deal with that to see where we are there,
24 okay.

25 MR. STILLEY: Certainly, Judge. Thank you.

1 THE COURT: Okay.

2 (Court in recess from 3:05 p.m. until 3:33 p.m.)

3 (The following proceedings continued within the
4 hearing of the jury:)

5 THE COURT: Good afternoon, ladies and gentlemen of
6 the jury. Mr. Briggs.

7 MR. BRIGGS: Your Honor, we'd call Sam Gerhardt to
8 the stand.

9 THE COURT: Very well.

10 SAM GERHARDT,
11 Having been first duly sworn, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. BRIGGS:

15 Q. Good afternoon. Would you please state your full name
16 for the record.

17 A. My name is Sammy Lee Gerhardt.

18 Q. What's the name that you typically go by, sir?

19 A. Sam.

20 Q. Sir, do you currently work at Mountain Park Baptist
21 Church Boarding Academy?

22 A. Yes, I do.

23 Q. What is your position there?

24 A. I'm pastor there.

25 Q. How long have you been pastor there?

1 A. For a couple years.

2 Q. For a couple years now?

3 A. Yes, sir.

4 Q. Prior to that, let's see, when did you become a pastor?

5 A. I've been there so long, just transitions take place, I
6 have to stop and think for a few minutes. It's been, I guess
7 it was probably 2002, yes, sir.

8 Q. Okay. Who is the pastor prior -- before you?

9 A. Brother Wills, Pastor Bob Wills.

10 Q. What's his title now?

11 A. He is senior pastor.

12 Q. And prior to becoming pastor, what was your title?

13 A. Associate pastor, same place.

14 Q. Pastor Gerhardt, how long did you go or how far did you
15 go in school?

16 A. I have a master's in Christian education.

17 Q. Where did you get that degree?

18 A. From Caroline University of Theology.

19 Q. And I take it you also have a bachelor's degree?

20 A. Yes, sir.

21 Q. And from what college or university?

22 A. From the same university, Caroline University.

23 Q. Pastor Gerhardt, what is the ministry of Mountain Park?

24 A. To reach young people through Christ. That's first and
25 foremost. That's why we're there.

1 Q. Okay. And to achieve that ministry does Mountain Park
2 have a mission or missions?

3 A. Yes, sir, we have a dual mission, to provide a quality
4 academic opportunity as well as to develop within them that
5 sense of character and responsibility to be productive
6 citizens and to nurture them toward a real genuine faith in
7 Christ.

8 Q. Hopefully everybody can see that okay. Pastor
9 Gerhardt, I'll show you what has been marked as Plaintiff's
10 Exhibit 9. Page 2. And I'll highlight a portion of the
11 page. What I've highlighted sir, first off, does this page 2
12 come from the Mountain Park parent/student handbook?

13 A. Yes, sir, it does.

14 Q. Were you involved in the preparation of that handbook,
15 sir?

16 A. Yes, sir, I was.

17 Q. So you are relatively familiar with the handbook?

18 A. Yes, sir, I am.

19 Q. And referring to page 2, those twin missions, have I
20 highlighted twin missions, highlighted in the handbook?

21 A. Yes, sir, you have.

22 Q. And is this handbook provided to all the parents that
23 enroll students at Mountain Park?

24 A. Yes, sir.

25 Q. As part of the twin missions, what are the basic or

1 fundamental parts of Mountain Park's practice and curriculum
2 that arise out of these missions?

3 A. Everything we do.

4 Q. Okay. So would that include the academics?

5 A. Yes, sir, it would.

6 Q. Okay. And it also includes, you know, teaching the
7 students to maintain a clean presence as well?

8 A. Yes, sir, all of those things.

9 Q. Okay. Maintain a clean environment?

10 A. Yes, sir.

11 Q. And is also learning a good work ethic as well?

12 A. Very important, yes, sir.

13 Q. Okay. So work is a fundamental and integral part of
14 Mountain Park's mission.

15 A. We could not operate and do what the parents ask us to
16 do without any and all of those. You must have all of those
17 parts.

18 Q. Okay. And how is that work important? What does it do
19 for the students?

20 A. Again, it provides the students with a sense of
21 accomplishment, a sense of responsibility and accountability.
22 A young person who can learn that mowing the yard and doing a
23 good job at mowing the yard, and somebody walking up and
24 saying, boy, the yard looks nice. I know Brother Wills is
25 faithful when he comes to visit to make a comment that, boy,

1 the grounds are looking good, appreciate you fellows keeping
2 the grounds up. And so it gives them a sense of
3 responsibility and then the accountability with that, which
4 in the same sense applies to their spiritual life. We were
5 created by God Almighty and we have a responsibility and an
6 accountability toward him. So you take the simple things and
7 apply them to the spiritual things.

8 Q. And these simple things, do you hope to develop these
9 within the students so they'll carry on the simple things in
10 the way of life once they leave Mountain Park?

11 A. Oh, yes, sir, most definitely. And it's just eating
12 that apple one bite at a time, a day by day process to try to
13 instill those principles of just solid character.

14 Q. Sir, prior to working at Mountain Park and going to
15 college, did you have any background that involved strict
16 regimented environment you were involved in?

17 A. Yes, sir. I worked with -- just the time frame there a
18 little bit, I worked with the ministries from the time I was
19 young, 21 years old. I went to work with my mother and
20 father-in-law.

21 Q. Did you also go in the service?

22 A. Yes, I worked with them until '84, '85 until I joined
23 the military.

24 Q. What branch of the service?

25 A. The Army.

1 Q. Sir, are you married?

2 A. Yes, sir, I am.

3 Q. And who is your wife?

4 A. My wife is Mrs. Wills' daughter, Debbie Gerhardt.

5 Q. And Debbie is also a defendant in this lawsuit?

6 A. I'm afraid so.

7 Q. And does she work at Mountain Park?

8 A. Yes, sir, she does.

9 Q. And what does she do?

10 A. She takes care of the bookkeeping and helps supervise
11 the young ladies.

12 Q. With -- who sets the policies at Mountain Park?

13 A. Pastor and Ms. Wills with input from me.

14 Q. So you do participate in some of the policy making?

15 A. Yes, sir.

16 Q. Okay. At Mountain Park who has the authority to hire
17 or fire staff?

18 A. Pastor Wills.

19 Q. Is your wife involved in making policy at Mountain
20 Park?

21 A. Not in a general sense, no, sir.

22 Q. And do you and your wife have any kids?

23 A. Yes, sir, we do.

24 Q. Okay. Is one of them Bo Gerhardt?

25 A. My son is Bo Gerhardt.

1 Q. And he's also a party to the lawsuit?

2 A. Yes, he is, I'm afraid.

3 Q. We've heard testimony in the course of this trial,
4 Pastor Gerhardt, about the students who are enrolled at
5 Mountain Park. Who enrolls students at Mountain Park?

6 A. The parents do.

7 Q. And what particular traits do the students tend to
8 have? Do they tend to come from trouble background?

9 A. Typically, yes, sir, they do.

10 Q. Okay. What sort of history do the students generally
11 have when they come to Mountain Park?

12 A. I often say that some of our kids, the parents send
13 their kids to us sometimes put a fence at the top of the hill
14 and other times put an ambulance at the bottom. A parent
15 calls me on the phone and says, Brother Gerhardt, I have a
16 young person and they are, you know, I can't control them
17 anymore. My daughter is slipping out at night or my son is
18 slipping out at night, and I don't know where they are going
19 or what they are doing. They were great students until they
20 hit junior high school and something happened, they began to
21 run with the wrong crowd and began to smoke and fight with
22 mom and dad. Kids have fought their parents and physically
23 abused their parents and all those things. Those are the
24 kind of kids we get.

25 MR. STILLEY: Objection. I'll withdraw that

1 objection.

2 Q. Based on the background you just testified about,
3 Pastor Gerhardt, I'd like to show you what was marked as
4 page 3 of Defendants' Exhibit A. Sir, have you seen this
5 document before?

6 A. Yes, sir, I have.

7 Q. Okay. It appears to be a form. What kind of form is
8 it?

9 A. We call it a preadmission statement. It's used when
10 the parent calls on the telephone initially, get the
11 information about the student.

12 Q. So this is a form that was prepared by you?

13 A. I prepared part of this form, yes, sir.

14 Q. All right. And on this form do you ask the parents to
15 describe generally the behavior the children have?

16 A. Yes, sir, we do.

17 Q. And is there a space on the form where they can
18 identify the particular summary of behavior?

19 MR. STILLEY: Objection, irrelevant.

20 MR. BRIGGS: Your Honor, actually I think it's
21 entirety relevant in this case because it goes to the basis
22 why students would be enrolled in the first place and why
23 they need corrective behavior.

24 THE COURT: Fine. I'll overrule for the time being.

25 BY MR. BRIGGS:

1 Q. So, Pastor Gerhardt, to an extent, the parents are
2 given an opportunity to describe generally the traits that
3 their children have or what they believe they have?

4 A. Yes, sir. We ask them to describe for us the problems
5 they are having at home that would cause them to call us in
6 the first place.

7 Q. Okay. Now, with respect to the third page of
8 Defendants' Exhibit A, this form has been completed. And
9 does it, in fact, relate to the plaintiff, Jordan Blair?

10 A. Yes, sir, it does.

11 Q. Was this completed in connection with a communication
12 from his parent?

13 A. Yes, sir, from his father.

14 Q. When was the communicate made?

15 A. The 19th of October in the year 2000.

16 Q. After this communication or shortly thereafter was
17 Mr. Blair, actually Jordan, was he actually enrolled at
18 Mountain Park?

19 A. It was a year later.

20 Q. A year later, okay. So you subsequently -- what
21 happens after you had a conversation around October 19th,
22 2000? What was the decision at that time?

23 A. At that particular time by the note that I have in the
24 upper left-hand corner, the parents indicated that they did
25 not have the resources financially, but they asked me to mail

1 them an application package, which I did. I referred them to
2 some other ministries that I knew of that they could call and
3 check on for help for their son.

4 Q. Okay. At that time in October 2000, with whom did you
5 speak specifically?

6 A. I talked to Mr. Ron Blair.

7 Q. Okay. And did he express a desire to enroll Jordan?

8 A. Yes, sir, he wanted to be able to.

9 Q. Okay. And you said that you subsequently got a call
10 about a year later from the Blairs?

11 A. Yes, sir, I believe it was.

12 Q. Okay. From whom specifically?

13 A. Again, from Mr. Blair.

14 Q. Okay. Did he again express a desire to enroll Jordan?

15 A. He certainly did.

16 Q. Subsequently did it actually come about that the
17 parents did make a decision to enroll him at Mountain Park?

18 A. Yes, sir, they did.

19 Q. Okay, very good. And, sir, now I'll show you what was
20 marked as Plaintiff's Exhibit 2. Sir, have you seen that
21 before?

22 A. Yes, sir, I have.

23 Q. And what is that form?

24 A. That is the basic application form to enroll a student
25 at Mountain Park.

1 Q. And is this form completed in relation to Jordan Blair?

2 A. Yes, sir, it is.

3 Q. And who would have completed this application?

4 A. His parents.

5 Q. Turning to the second page of Plaintiff's Exhibit 2, is
6 there a space for the parents to sign the application?

7 A. Yes, sir, there is.

8 Q. Okay. And did the parents, in fact, sign the
9 application?

10 A. Yes, sir, they did.

11 Q. Okay. And can you tell by looking at Plaintiff's
12 Exhibit 2 the date that Mr. Blair was enrolled?

13 A. He was enrolled on the 20th of October in 2001
14 according to the signature and the date the parents put.

15 Q. So that's when the parents actually completed the
16 application?

17 A. Yes, sir, that's when they completed the application,
18 I'm sorry. That's when they completed the application.

19 Q. Okay. And when did Mr. Blair arrive at Mountain Park?

20 A. He arrived four days later, on the 24th.

21 Q. Sir, I'd like to show you Defendants' Exhibit C and
22 represent that this is the sample schedule that's already
23 been identified --

24 A. Yes, sir.

25 Q. -- in the course of the trial. Sir, did you actually

1 prepare Exhibit C?

2 A. I believe I did, yes, sir.

3 Q. Okay. And was it prepared in connection with this
4 lawsuit?

5 A. Yes, sir, it was.

6 Q. Okay. But is the schedule maintained back at Mountain
7 Park?

8 A. Yes, sir.

9 Q. Okay. I'd like to focus your attention, Pastor
10 Gerhardt, to one particular entry. And just so we represent,
11 this is a sample schedule for a typical week at Mountain
12 Park; is that correct?

13 A. That's correct.

14 Q. Would this schedule have been the same back in 2001?

15 A. Yes, sir.

16 Q. Focusing your attention to the 2:30 time entry,
17 practical training, can you describe for the jury what
18 practical training is?

19 A. Certainly. It's that time and opportunity that the
20 young men have to -- again, to continue to learn, to apply in
21 a practical way the principles that are learning about living
22 life. How to dig a fence post and set a fence post and do it
23 in such a way that the fence post won't come out of the
24 ground. Just those kind of practical things. How to mow a
25 yard and mow it correctly. Those are the kind of things we

1 do. As well as the ball playing and being a good sport on
2 the ball field and knowing how to run through first base.

3 Q. So some days in the typical week the students will be
4 on work detail doing some of the tasks you assigned and other
5 days they would be doing games?

6 A. Yes, sir, that's correct.

7 Q. And the work detail that they do, how is that -- is
8 that an essential and important part of the overall
9 curriculum and what's offered by Mountain Park?

10 A. Oh, yes, sir, it certainly is. Again, we could not
11 have an opportunity to go out in a practical way and do the
12 work we do, how would we be able to instill that sense of
13 accomplishment and pride and self worth and accountability
14 and responsibility and discipline and all those things that
15 go with the job well done.

16 Q. Okay. You had mentioned mowing lawns. When some
17 students arrive at Mountain Park, are there actually some
18 male students who never mowed the lawn before?

19 A. That's for sure, yes, sir. We have students who have
20 never mowed the yard before, don't have an idea how to mow,
21 and look back and see that you missed a strip of grass
22 three inches wide, and you need to go back and get it. We
23 have to teach them how to wash a car from the top to the
24 bottom.

25 Q. And productive adults in society typically know how to

1 do that, would that be a fair statement?

2 A. Yes, sir.

3 Q. Sir, taking a look also on Exhibit C, we have some
4 academic training. Can you describe for the Court and the
5 jury briefly the academic curriculum that's offered by
6 Mountain Park?

7 A. The primary curriculum is an accelerated Christian
8 education curriculum out of Louisville, Texas.

9 Q. And does that -- what does that -- does it integrate
10 any other aspects into the program? What does the program
11 consist of?

12 A. The ACE curriculum is a Christ centered bible based
13 individualized self based curriculum. The students are to
14 take diagnostic tests to tell us where to place them in the
15 curriculum based on their own ability, their own performance.
16 It doesn't necessarily distinguish a grade level, but a level
17 of work and a level of ability to accomplish the work.

18 It's common for us to have a student come in and
19 they need to go back and review and learn again, if they ever
20 did learn basic math, how to add and subtract, multiply and
21 divide, those kind of things.

22 And also in the curriculum is the sense of the way
23 the system works on a day-to-day basis, the curriculum
24 procedures themselves instill responsibility, accountability,
25 and Christian character.

1 Q. And is it hoped that through this program that some, if
2 not all, the students at Mountain Park will have the ability
3 to go on to college after they graduate?

4 A. Yes, sir, it certainly is. That's the goal.

5 Q. In connection with this curriculum, are credits granted
6 once certain course levels are completed?

7 A. Yes, sir, they are.

8 Q. Okay. And I'll show you page 65 of Plaintiff's
9 Exhibit 9. And the top of this page, does this generally
10 show the courses and credits that are required at Mountain
11 Park?

12 A. Yes, sir, it does, it shows the required credits in
13 each subject and how many have to be obtained in order to
14 graduate.

15 Q. Now, taking a look on that list, there's a reference to
16 physical education and two credit hours. Do you see that?

17 A. Yes, sir, I do.

18 Q. Okay. Now, what does that physical education, those
19 two credit hours, what does that encompass?

20 A. Okay, what that means, in order to graduate from our
21 school, they have to accomplish two years of PE. They have
22 to earn a credit for two years worth of work. In order to
23 earn that credit for us, the time that they spend in the
24 afternoon doing their -- whether it's playing ball or pulling
25 brush or building a fence, the physical activity they are

1 involved in, all those things are evaluated to give them a
2 physical education grade.

3 Q. Okay. So as you said, then all those physical
4 activities are incorporated in to give the physical education
5 credit?

6 A. Yes, sir, that is correct.

7 Q. Okay. So then it -- also would it be fair to say then
8 the work that's done in the afternoons, that that also
9 relates into the academic programs?

10 A. Yes, sir, it does.

11 Q. Pastor Gerhardt, does Mountain Park maintain a no-touch
12 policy with respect to students?

13 A. Yes, sir, it does.

14 Q. So staff are generally not permitted to have physical
15 contact with students?

16 A. That's correct.

17 Q. All right.

18 MR. BRIGGS: Your Honor, may I have just a moment to
19 confer?

20 THE COURT: Sure.

21 MR. BRIGGS: That's it at this time, Your Honor.

22 Thank you.

23 THE COURT: Very well.

24 CROSS-EXAMINATION

25 BY MR. STILLEY:

1 Q. Can you tell the jury the substance of the no-touch
2 policy?

3 A. The substance of the no-touch policy would be simply
4 that the staff should not manhandle the students.

5 Q. And does that include even senior staff such as
6 yourself?

7 A. Correct, the staff should not manhandle students.

8 Q. Okay. So it's fair to say then that slamming someone
9 up against a wall would violate that no-touch policy; is that
10 correct?

11 A. That would be correct.

12 Q. Even for a person such as yourself, correct?

13 A. Sure, yes, sir.

14 Q. Within the past three -- have you ever violated that
15 policy?

16 MR. BRIGGS: Your Honor, I'll object.

17 THE COURT: Sustained.

18 MR. BRIGGS: Outside the scope.

19 BY MR. STILLEY:

20 Q. Is this no-touch policy written down anywhere?

21 A. I'd have to go back and look in our handbook to see if
22 it's written there. I don't recall, sir.

23 Q. Did you have anything to do with the formulation of
24 this policy?

25 A. This is a hard fast policy that Brother Wills has had

1 with us for many years.

2 Q. I take it then you didn't have anything to do with the
3 formulation of the policy?

4 A. That policy was in place when I came to work in the
5 ministry of Mountain Park.

6 Q. Has it changed since that time?

7 A. No, sir, it has not.

8 Q. Now, you talked about physical education, correct?

9 A. Yes, sir.

10 Q. There is no formal lesson plan for physical education?

11 A. There is no formal education plan for physical
12 education, no, sir.

13 Q. There is nothing in writing from which a parent could
14 see that physical education might include tasks normally
15 associated with work, is there?

16 A. No, I'm afraid there's not anything in writing. It is
17 discussed with the parents during orientation.

18 Q. And how do you know that?

19 A. Because I conduct most of the orientation.

20 Q. Do you have a checklist?

21 A. Mental checklist.

22 Q. So you check off in your mind what you told the
23 parents?

24 A. I know what I talk to every parent about when they
25 enroll their students, yes, sir.

1 Q. There is no agricultural program, agriculture
2 instruction program at Mountain Park or Palm Lane, is there?

3 A. No, sir, not in a formal sense there is not.

4 Q. You're involved in formulating policy, at least some
5 policies at Mountain Park and Palm Lane, correct?

6 A. Yes.

7 Q. And is it against --

8 A. At Mountain Park?

9 Q. At Mountain Park.

10 A. Yes.

11 Q. And at Mountain Park it is against the policy for the
12 students to have a copy of the handbook, correct?

13 A. Against the policy for the students to have a copy of
14 the handbook? I cannot say that.

15 Q. What's the policy regarding students having a handbook?

16 A. I don't recall a student ever asking for a handbook.

17 Q. If they asked, would they get it?

18 A. I'm not sure. I guess I'd have to consider who, what,
19 why, and how. There's a reason for that.

20 Q. And do you mind telling us what the reason is?

21 A. Certainly, yes, sir. Part of the training program is
22 for the students to learn step by step, day by day. And they
23 learn that in the day-to-day instruction and the day-to-day
24 process of being a part of the ministry between the lessons
25 being given in the school, between instructions given by

1 orientation guides, other students, the peer pressure, the
2 instructions that they receive from the staff that work with
3 them right there hand to hand on the day-by-day basis.

4 Q. Is it fair to say then that the student is expected to
5 just take staff's word on what the rules are?

6 A. Yes, sir, that's correct.

7 Q. And they have no way to rebut the staff's word on what
8 the rules are, correct?

9 A. No, sir, that's incorrect.

10 Q. What's the truth of the matter?

11 A. The truth of the matter is my office is located in a
12 central location on the campus. The students have easy
13 access to me. All the students are fully aware that if they
14 had a question or problem with a staff member, whether it
15 was -- whoever it was, one of my family or whoever it might
16 be, all the students understand that they have a problem, a
17 question, they think they've been mistreated, they think
18 they've been done wrong by anybody, student or staff, they
19 can come see me wherever they feel a need to. Oftentimes
20 they'll drop a little note.

21 I have a little box outside my door, they'll drop a
22 note, Brother Gerhardt, I need to see you, I have a problem.
23 Sometimes they'll walk in the office right, you know, just at
24 whatever time. And all the students know. For instance, a
25 new student who happened to be on orientation, if they said

1 to their guide, I want to see Brother Gerhardt and I want to
2 see him right now, then that guide would have the
3 responsibility to take them to whatever staff is there with
4 them out and about or in the school and they are to see that
5 they get to me as quickly as they can get them to me.

6 Q. So you're telling the jury you have an open door
7 policy?

8 A. Oh, yes, sir, I do.

9 Q. And any student can come to speak to you without fear
10 of repercussion?

11 A. That's true, yes, sir.

12 Q. Has a student ever come and say I don't think a rule
13 requires a certain thing?

14 MR. BRIGGS: Your Honor, I'm not quite sure where
15 this is leading. I'm not sure it was given on direct, and it
16 relates to direct. I'll object to relevance.

17 MR. STILLEY: He talked about the --

18 THE COURT: You know, how far do we go down the
19 road? You know, we're going down a road, you know, the door
20 is kind of open there. How far you going? You know, how far
21 do we go?

22 MR. STILLEY: I'm almost there. I'm almost there.

23 THE COURT: Where you might be going might be beyond
24 where we need to go.

25 MR. STILLEY: I don't think it is.

1 THE COURT: Let's see. Go ahead.

2 BY MR. STILLEY:

3 Q. Okay. Mr. Gerhardt, do you remember the question?

4 A. Please ask it again.

5 Q. Have you ever had a student come to your office and say
6 I think I'm being required to do something that isn't called
7 for by the rules?

8 A. I don't know that a student has ever come to my office
9 and made a statement like you just stated.

10 Q. Has a student ever come to your office and gotten into
11 a discussion such that it was necessary to show the student
12 the rules?

13 A. To show the student the rules? No, sir.

14 Q. Now, on direct examination you spoke a little bit about
15 the document that was used to enroll Jordan Blair, did you
16 not?

17 A. Yes, sir.

18 Q. And do you see where I've marked at the bottom, it says
19 on top, date of enrollment, correct?

20 A. Where you marked on the bottom of the page, the top
21 line? I understand what you're asking now. Yes, sir, it
22 says date of enrollment 10/24/01.

23 Q. And on the bottom it says date of withdrawal, 11/10/01,
24 correct?

25 A. Yes, sir, obviously a mistake on the date. Oh, excuse

1 me, I'm sorry, 11/10/01, yes, sir, that's correct. I'm
2 sorry.

3 Q. And to your knowledge there are no documents signed by
4 plaintiff Jordan Blair's parents enrolling their son at Palm
5 Lane Academy, correct?

6 MR. BRIGGS: Objection, Your Honor, relevance. It's
7 outside the scope of direct.

8 MR. STILLEY: The defendants are trying to say that
9 because they have permission, they can compel work without
10 having any liability to pay for the work. And I'm trying to
11 demonstrate that there were no documents signed by the
12 patients enrolling Mr. Blair in Palm Lane.

13 THE COURT: That don't have anything to do with
14 liability for work. I mean, that's not part of the
15 definition of employee/employer. That doesn't get into that.
16 Parental, that has nothing to do with the parents.

17 MR. STILLEY: Okay. Well, that's reasonable. But I
18 would still --

19 THE COURT: I know you still, you always still. I
20 guess it got something to do with battery, huh?

21 MR. STILLEY: The battery had already been committed
22 then. I don't think I can stretch that far, Judge.

23 THE COURT: Sustained. Move on.

24 MR. STILLEY: Thank you, Judge.

25 BY MR. STILLEY:

1 Q. Now, you said you went to Caroline University; is that
2 correct?

3 A. Yes, sir, I received my degree from Caroline University
4 of Theology.

5 Q. And what city is that located in?

6 A. They've changed their location a couple times. And
7 honestly, it didn't come to the top of my head where they are
8 in Carolina.

9 Q. Where were they at when you were there?

10 A. As I say, I don't remember. I don't remember the city
11 and state, it was a directed study course.

12 Q. Was it a home study course?

13 A. Yes.

14 Q. How long did it take you from start to finish on this
15 program?

16 A. I finished my master's in about a year.

17 Q. You got your bachelor there, correct?

18 A. I completed my bachelor's work there, yes, sir.

19 Q. And how long did it take?

20 A. It took me many years to accomplish my bachelor's
21 degree. I started in 1972 and took courses. And over the
22 course of the years it was -- whenever it was in the nineties
23 before I finally accomplished my bachelor's.

24 Q. And you testified -- okay, thank you very much. That's
25 good. Now, you testified on direct the purpose of work was

1 to create a sense of accomplishment, accountability, and
2 responsibility?

3 A. Yes.

4 Q. Isn't it true that you could accomplish those same
5 goals with certified programs?

6 A. Oh, I'm sure you could, but that's not what we're
7 about. We're not interested in the certified program. We
8 just want to provide a safe secure place and reach the kids
9 through Christ and teach them how to work hard. And my daddy
10 didn't need it and his granddaddy didn't need it, and we don't
11 see why we needed a certification of some kind to teach a
12 young man how to work and the value of work.

13 Q. Well, isn't it fair to say that you could teach the
14 same values if the boys were paid for their labors?

15 MR. BRIGGS: Objection, Your Honor, that would call
16 for speculation.

17 THE COURT: Sustained.

18 BY MR. STILLEY:

19 Q. Isn't it true that those same values could be taught in
20 a program in which the instructors were certified?

21 MR. BRIGGS: Same objection, Your Honor.

22 THE COURT: Sustained.

23 Q. Now, I believe you said that your father-in-law does
24 all the hiring and firing?

25 A. He has the final say on all hiring and firing, yes,

1 sir.

2 Q. Does he do all the hiring and firing?

3 A. He may not physically do all the hiring firing himself
4 in person. He may use me, but I do not do anything without
5 conversation with him. So he is the authority.

6 Q. Okay. Is it possible that somebody -- for example,
7 junior staff, who hires the junior staff?

8 A. No junior staff are hired or fired without the
9 authority and consent of Senior Pastor Wills.

10 Q. Are you frequently the person that consults with Pastor
11 Wills about that?

12 A. Yes, I am.

13 Q. You told us also on direct about the type of kids that
14 come to your facilities, correct?

15 A. Yes, sir.

16 Q. Isn't it true that some of these kids are really pretty
17 good kids when they come in?

18 A. The kids come to us because their parents have called
19 because there is some problem within the home that mother and
20 daddy feel like they are not reaching their child at home.
21 Most of the time when a parent calls us, whatever the
22 behavior is in that parents' mind, it's gone to a place that
23 they no longer have the ability to control. And most often
24 after they've tried every other resource. No parent calls us
25 and says will you take my child, enroll my child in your

1 school knowing that they are sending them miles, sometimes
2 states from home. They don't do that lightly. They've tried
3 often everything else. When a parent calls us, whether the
4 kid's had lots of problems or a few problems, whatever those
5 problems are, the parent believes that those problems are
6 beyond their ability to care for and they leave their child,
7 they are losing control of the ability to raise and train
8 their child.

9 So, again, I said when we started that for some
10 folks we're a fence at the top of the hill. For other folks
11 we're an ambulance at the bottom. Some kids come in great
12 kids. They just got, you know, wobbling on the axles.
13 Others come in and it's just a real tragic situation.

14 Q. Well, isn't it true that some of these parents send
15 students to Mountain Park when there is really no problem
16 with the student?

17 A. No, sir.

18 MR. BRIGGS: Objection, Your Honor, calls for
19 speculation.

20 MR. STILLEY: They've testified about --

21 THE COURT: You've asked and answered that. Let's
22 move on.

23 MR. STILLEY: Okay.

24 BY MR. STILLEY:

25 Q. Oh, can you tell us the approximate percentage of your

1 students that come from outside the state of Missouri from
2 Palm Lane -- for Mountain Park?

3 A. To give you percentages, we're not that scientific.
4 Could I say the majority of our students come from outside
5 the state of Missouri, yes, sir, they do.

6 Q. Is it fair to say that at least 80 percent of them come
7 from outside the state?

8 A. That's probably a fair statement, sure.

9 Q. And is the same true for Palm Lane in Florida?

10 A. I'm not involved with their enrollment.

11 Q. Now, you noted on one of these documents that you put
12 down, refer to others, no money.

13 A. Yes, sir.

14 Q. Was that simply because the Blair family couldn't
15 afford the tuition at that point in time?

16 A. At that point in time they could not afford the
17 tuition, yes, sir.

18 Q. Does Mountain Park ever take students kind of on a
19 scholarship basis where their parents don't have to pay?

20 A. We have provided amounts of scholarship in times past,
21 yes, sir, we have.

22 Q. Any particular reason that the Blair family wouldn't
23 qualify?

24 A. I don't know of a particular reason or the
25 circumstances at the time, no, sir.

1 Q. Isn't it true that -- scratch that question.

2 MR. STILLEY: Your Honor, could I have just a moment
3 with my client? Thank you. Pass the witness.

4 THE COURT: Very well. You ready for your next
5 witness?

6 MR. BRIGGS: We are. We have nothing further of
7 Pastor Gerhardt. Thank you, sir.

8 MR. OLIVER: Your Honor, we have no further
9 witnesses on the subject matter that's near and dear to your
10 heart. We would renew our suggestions previously made.

11 THE COURT: Okay.

12 MR. OLIVER: We do have another witness on the
13 battery issue, but not on the Fair Labor Standards Act.

14 THE COURT: Do you have any rebuttal on the Fair
15 Labor Standards?

16 MR. STILLEY: Judge, if it please the Court, what
17 I'd like to do is get the defense case closed and then we can
18 address that at that point in time.

19 THE COURT: I understand what you would like to do,
20 but, see, I'm the one with the robe on.

21 MR. STILLEY: And I respect that highly, Judge, I
22 certainly do.

23 THE COURT: Good. And I keep telling you during the
24 recess what I want to do. So I want to know, do you have any
25 rebuttal evidence on the testimony on this Fair Labor

1 Standards Act issue?

2 MR. STILLEY: Am I going to be compelled to put on
3 their rebuttal case before they are complete with their case
4 in chief?

5 THE COURT: In terms of Fair Labor Standards Act,
6 they said they have completed. We discussed this and you
7 said you were agreeable to it. I guess you're changing your
8 mind. I told you we would look at doing this this way. You
9 said you were agreeable to it. They said they completed
10 theirs, I said do you have anything else on that issue?

11 MR. STILLEY: Judge, I didn't hear them say we rest
12 our case with respect to the issue.

13 THE COURT: Please. I'm not talking about that.
14 Are you listening?

15 MR. STILLEY: Judge, I'm listening very carefully.

16 THE COURT: Fine. Listen again. They said they
17 have completed their evidence on the Fair Labor Standards Act
18 issue. I said do you have any further evidence or rebuttal
19 evidence on that issue? I'm not going to allow them to put
20 any more evidence on. They said they've rested on it. I'm
21 not going to allow them to put on any evidence. We discussed
22 it this during recess and I said do you have any other
23 evidence you want to put on on that issue.

24 MR. STILLEY: Yes, Your Honor, I do.

25 THE COURT: Fine. Let's put it on.

1 MR. STILLEY: Let me see if I make sure I understand
2 the rules.

3 THE COURT: Well, I asked you, let's put it on.

4 MR. STILLEY: Let me understand so I don't violate
5 the rules. I'm not trying to violate the rules, Judge. I
6 want to know when I put on this witness, am I limited to if
7 there's something that relates both to the fair labor and the
8 battery?

9 THE COURT: You can call that witness later. You
10 can call them back again on whatever other issues you have.
11 Right now we want to deal with the Fair Labor -- I want to
12 deal with the Fair Labor Standards Act issue. If there's
13 something on another issue, then you can call the witness
14 back again.

15 MR. STILLEY: Judge, there's overlap. I'm not sure
16 that I can sort the two out.

17 THE COURT: There is -- it's all overlap.

18 MR. STILLEY: Well, now in the subsequent rebuttal
19 am I going to be limited to only the battery and only the
20 FLSA?

21 THE COURT: Yes. We're going to conclude that.
22 That's what we are doing. They will not be allowed to put on
23 any other evidence. I just told you that. Now, let's listen
24 to this again. They said they have completed their Fair
25 Labor Standards Act evidence. I want to know if you have any

1 other, you can put that on now. And then they are completed.
2 Then you can complete whatever you have on that issue.

3 MR. STILLEY: If they don't mind me putting on
4 evidence that relates to the Fair Labor Standards Act even
5 though it may have some crossover effect into the battery
6 claim, I don't mind putting my witness on.

7 THE COURT: Well, if there is just connection there
8 that overlaps, fine. Otherwise you'll be given an
9 opportunity to put the other evidence on separately.

10 MR. STILLEY: Okay. I do want to reserve my
11 objection because I feel like their case in chief should be
12 completed before I have to start. But subject to what the
13 Court has just said, I will call a witness for rebuttal. You
14 ready to start?

15 THE COURT: We're ready to go. Call the witness.

16 MR. STILLEY: Ray Palmer.

17 MR. OLIVER: Your Honor, the original objection to
18 the witness as not being listed in interrogatory answers
19 No. 35 and No. 36. No. 37 of the Palm Lane answers not being
20 listed. I just don't want to lose it.

21 THE COURT: Come on.

22 MR. OLIVER: I didn't want to lose it. That's all.

23 THE COURT: I understand.

24 (The following proceedings were held at the bench
25 and outside the hearing of the jury:)

1 THE COURT: Now, what's the story on this witness?

2 MR. OLIVER: Ray Palmer is a former student, Your
3 Honor, who was not listed in Rule 26(a) disclosures.

4 THE COURT: Was he just recently --

5 MR. OLIVER: In the pretrial and only in the
6 pretrial. His name -- Palm Lane specifically asked in
7 Interrogatories 34, 35, and 36 of the name, address, and
8 phone number of people who had knowledge about things
9 relating to the business.

10 THE COURT: I've ruled on this. I've excluded that
11 witness.

12 MR. STILLEY: Wait a minute. This is rebuttal. And
13 rebuttal is different than the case in chief. I didn't try
14 to put him on in the case in chief.

15 THE COURT: Tell me what he's going to rebut then.

16 MR. STILLEY: Let me tell you what he's going to
17 testify to if he's allowed to testify.

18 THE COURT: Well, fine. If he's rebuttal, you say
19 he's rebuttal.

20 MR. STILLEY: He's rebuttal.

21 THE COURT: Don't tell me what he's going to testify
22 to, tell me what he's going to rebut.

23 MR. STILLEY: He's going to rebut the assertion that
24 students are not put on extended forced labor, corrective
25 labor or whatever else you want to put it.

1 MR. OLIVER: That's an issue he raised, not an issue
2 we raised. He can't ask a question to set up a situation for
3 him to rebut. He asked the question, we didn't.

4 THE COURT: Let's stay calm. What do you have to
5 say? It seems to me, that seems to be my recollection that
6 you raised the issue. Go ahead.

7 MR. STILLEY: I didn't raise -- Judge, here's what
8 they did. They said we just do a little bit, they might have
9 to do just a little bit of work. This boy worked for seven
10 months and they made him haul wood for seven months. And he
11 still wouldn't have gotten off of it except his grandpa found
12 out about it and he became so desperate that his desire to
13 communicate overwhelming fear.

14 THE COURT: Fine, fine, fine. I don't want to hear
15 about, you know, that the grandfather got mad, all this old
16 stuff you're talking about. See, you want to throw in
17 everything but the kitchen sink. Now, since he's rebuttal,
18 you can have him testify because Bo Gerhardt did say
19 something about they didn't -- it was never six months, it
20 may have been a couple months or something like that,
21 whatever he said. But you bring him on, ask him who he is,
22 what his background is in terms of having knowledge, and you
23 get to this extended punishment or discipline detail and
24 that's it, okay.

25 MR. STILLEY: Judge, I want to make a record on

1 this.

2 THE COURT: You do that. You make a record later on
3 on something else. Now, you told me -- see, you asked for
4 rebuttal. You're like, give me an inch, you know, and then
5 give me a mile. You told me you had a rebuttal witness. I'm
6 giving you that. Now you're not happy. What do you want me
7 to do? As they say, please, what do you want? Forget you.
8 You bring him on with that, and we'll deal with the other
9 later.

10 (The following proceedings continued within the
11 hearing of the jury:)

12 RAY PALMER,
13 Having been first duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. STILLEY:

17 Q. Please state your name for the record.

18 A. Ray Palmer.

19 Q. And where do you live?

20 A. Schertz, Texas, S-c-h-e-r-t-z.

21 Q. And what large town is that near?

22 A. San Antonio.

23 Q. And how old are you?

24 A. Seventeen.

25 Q. And who do you live with?

1 A. My grandpa.

2 Q. And is that because it's -- your parents are not
3 available to take care of you?

4 A. Yeah, they are my guardian.

5 Q. And tell us about your education before -- scratch
6 that. Were you at a place called Mountain Park Boarding
7 Academy for a period of time?

8 A. Yes, sir.

9 Q. And what was your starting date and stopping date?

10 A. I wasn't really in school that much. I mean, I was
11 like working. I wasn't really in school.

12 Q. I understand. I just want to know the date of your
13 arrival at Mountain Park and the date of your departure from
14 Mountain Park, just those two dates.

15 A. December 7th, and I left on August 15th of 2003. And I
16 was there --

17 Q. And can you tell us about your educational background
18 before you went to Mountain Park?

19 MR. OLIVER: Your Honor, what does this have to do
20 with?

21 MR. STILLEY: I just want to let the jury know what
22 kind of individual that they are getting testimony from.

23 THE COURT: Briefly.

24 MR. STILLEY: Briefly.

25 THE COURT: Right. Go ahead.

1 BY MR. STILLEY:

2 Q. Can you tell us about what grade you were in and what
3 school you were in before you went to Mountain Park?

4 A. I was in 11th grade, and I went to Samuel Clemons High
5 School.

6 Q. And what kind of grades did you have?

7 A. As and Bs.

8 Q. And after you got out of Mountain Park, have you been
9 in school?

10 A. Yeah, I'm in school right now.

11 Q. And where are you going to school at?

12 A. Samuel Clemons High School.

13 Q. What kind of grades are you making now?

14 A. Cs and Bs.

15 Q. Okay. When you got to Mountain Park, what kind of
16 activities were you put to doing?

17 A. I was in like second grade PACE work and I was -- and
18 they said I was supposed to be in -- I was in ninth grade,
19 and I was supposed to be in 11th.

20 Q. And did you do PACE work?

21 A. Not really. I wasn't really in school the whole time I
22 was there. I was either standing in the corner on the wall
23 or I was stacking wood.

24 Q. Okay. And how many hours a day did you work stacking
25 wood?

1 A. Like eight hours or a long time, I don't know exact.

2 Q. Was it the same amount of time every day?

3 A. Yes, sir.

4 Q. You didn't vary the amount of time you worked at any
5 time?

6 A. No, sir.

7 Q. What time did you get up in the morning?

8 A. I got up once at 4:45 in the morning and I got up at
9 3:15 in the mornings stacking wood.

10 Q. And now why would you get up at 3:15?

11 A. I don't know. I guess they are just being mean.

12 Q. And what did you do after you got up at 3:15? On that
13 day that you got up at 3:15, can you just tell the jury what
14 you did during that day?

15 A. I got up and I stacked wood back and forth, just back
16 and forth. And also, I don't know, I got a big gouge on my
17 leg when I wasn't hauling wood fast enough.

18 Q. Now, can you tell us when you got up, what time did you
19 start hauling wood?

20 A. They gave us 15 minutes to get ready, so I started
21 3:45 -- I don't know the exact time, about 3:45.

22 Q. Okay. And did you go to breakfast?

23 A. Yes, sir, when everybody else went.

24 Q. So when you went to breakfast, how long had you been
25 hauling wood?

1 A. We went to breakfast at seven -- yeah, we went to
2 breakfast at seven, so three hours.

3 Q. What did you do after breakfast?

4 A. Went back and stacked wood.

5 Q. How long did you get to eat breakfast?

6 A. Twenty minutes. And sometimes I had to stand in the
7 corner.

8 MR. OLIVER: Your Honor, does this have something to
9 do with this case? Objection, it's irrelevant, immaterial.
10 The specific acts not rebutting anything.

11 MR. STILLEY: This is just what I told the Court was
12 going to come out.

13 THE COURT: Well, fine. Let's move on with it.

14 MR. STILLEY: Certainly.

15 THE COURT: Okay. Because we're talking about hours
16 and so forth, that's what you indicated to me you were going
17 to talk about.

18 BY MR. STILLEY:

19 Q. And how long did you haul wood after breakfast?

20 A. Are you during school or --

21 Q. Well, did you go to school that day?

22 A. No, sir, I stacked wood during school.

23 Q. You stacked wood during school hours?

24 A. Yeah. And they had people in school going from shifts
25 to watch me.

1 Q. And what did you call the people that watched you?

2 A. They called them orientation guides.

3 Q. And how long -- did you get a mid morning break?

4 A. One break, yes, sir.

5 Q. In the mid morning?

6 A. Mid morning, like at 11 I got a break.

7 Q. Okay. How long was that break?

8 A. Five minutes.

9 Q. And what did you get to do at that break?

10 A. Pee and use the rest room and wash my hands and stuff
11 and get a drink of water.

12 Q. Did you get a lunch break?

13 A. When everybody else went to lunch, I got a lunch break.

14 Q. And how long was the lunch break?

15 A. Thirty minutes.

16 Q. And what did you do after lunch?

17 A. Went back and stacked wood.

18 Q. And how long did you stack wood?

19 A. Till five o'clock.

20 Q. Did you stop stacking wood at five o'clock?

21 A. Well, sometimes I went in and got for showers at five
22 but then sometimes I stayed until dinner, and we left for
23 dinner at six.

24 Q. On this day when you got up at 3:15, did you quit the
25 wood stacking at 5 p.m.?

1 A. The wood stacking in the morning?

2 Q. No, at five in the afternoon.

3 A. Sometimes, yes, sir. Sometimes I would stay till
4 shower. I mean, sometimes I would stay till dinner. I would
5 go to dinner and then go back and take a shower.

6 Q. Were you ever forced to carry the wood faster than you
7 were trying to carry the wood?

8 A. Yes, sir.

9 MR. OLIVER: Your Honor --

10 THE COURT: I'll sustain this. We're talking about
11 hours. Now you're talking about fast.

12 MR. STILLEY: I'm not what?

13 THE COURT: You're talking about how fast. We're
14 talking about hours.

15 MR. STILLEY: I'm talking about --

16 THE COURT: We understand that you're saying that
17 this is work. Now you want to talk about how fast.

18 MR. STILLEY: Well, actually --

19 THE COURT: There is an objection. I am sustaining
20 that. Okay.

21 MR. STILLEY: Judge, can I revisit that then after
22 the conclusion, total conclusion of the case?

23 THE COURT: We'll talk about it.

24 BY MR. STILLEY:

25 Q. Okay. You told us about a specific day. Was this a

1 typical day? Did you typically get up before 4 a.m.?

2 A. Yes, sir. I was pretty much getting up at 4:45 a.m.
3 On 4:45 a.m. Monday through Friday for like a month.

4 Q. Okay. And did you haul wood each day, Monday through
5 Friday?

6 A. Yes, sir. And actually I hauled it Saturday too.

7 Q. And how many weeks did this go on?

8 A. For like three to four weeks. And then if I did good
9 hauling wood, they took me off.

10 Q. All right. Now, did you get taken off after three or
11 four weeks at Mountain Park?

12 A. Yes, sir. I was on the wood stacks off and on, off and
13 on.

14 Q. And why did you get taken off the wood stacking?

15 A. Because I guess I got good problems -- I didn't have
16 any problems.

17 Q. And then did you get put back on wood stacking?

18 A. Yes, sir.

19 Q. Why did that happen?

20 A. Because I wouldn't eat -- I don't know.

21 Q. Because what?

22 A. I guess -- why did I get put back on wood time the
23 second time?

24 Q. Yes, the second time.

25 A. The second time I was eating breakfast and Mr. Bo

1 Gerhardt told me to eat my --

2 MR. BRIGGS: Objection.

3 MR. OLIVER: This is the other example of --

4 MR. STILLEY: Your Honor, I'm just trying to show
5 why he was put back.

6 THE COURT: No, you aren't. Please. Talk about the
7 hours that he worked. You want to show other things. We're
8 talking about hours.

9 MR. STILLEY: And nothing about the reason that he
10 went back on? Because the defendant said that the
11 corrective --

12 MR. OLIVER: Come on, Your Honor, he's making
13 speaking objections. He's testifying to the jury.

14 MR. STILLEY: I'm happy to come up. I don't have a
15 problem.

16 THE COURT: The hours. The hours.

17 MR. STILLEY: And nothing about anything else?

18 THE COURT: Well, I don't want to get into the
19 details of it.

20 MR. STILLEY: Okay.

21 BY MR. STILLEY:

22 Q. From the time you were first taken off of the wood
23 carrying detail until the second time that you were on the
24 wood carrying detail, how long was that?

25 A. Like eight to nine hours. I had to wake up at 4:45 in

1 the morning. I stayed there till breakfast, which was seven.
2 And then after that I went back and stacked wood till lunch,
3 and went to lunch. And then after that I stacked wood till
4 five o'clock.

5 Q. But I'm trying to find out, it sounds like that you
6 were actually off the wood cutting detail for several days?

7 A. Yeah.

8 Q. How many days were you off the wood cutting detail
9 before you got put back on?

10 A. Oh, two to three weeks.

11 Q. All right. And when you were put back on -- wait a
12 minute, scratch that. For this two or three weeks, did you
13 go to class during that period of time?

14 MR. OLIVER: Come on, Your Honor, objection.

15 A. No, sir, I stood in the corner. I was only
16 approximately in school for like a month the whole time I was
17 there.

18 Q. Now, when got back to wood cutting duty, how long were
19 you --

20 THE COURT: Why don't you try to summarize this.

21 MR. STILLEY: I'm trying to summarize it to the
22 extent that I can.

23 THE COURT: No, you are not.

24 MR. STILLEY: We've got a young witness.

25 THE COURT: Please. Stop begging up here. You're

1 begging. What I'm saying is hours. You're trying to go
2 through the minutiae. Talk about hours. You told me that
3 you had a witness who could say something different about the
4 hours of work, and that someone was on discipline for longer,
5 for this six-month period or something. So let's hear the
6 substance of that, not every little point and stop on the
7 road. You want to tell me about every stop on the road from
8 here to way someplace, you know, every little -- every little
9 town. Don't want to hear about that. Give me the hours that
10 you told me you were going to give me and so forth. Give me
11 what you told me you were going to give me.

12 BY MR. STILLEY:

13 Q. Mr. Palmer, can you tell the jury, just explain to the
14 jury how many -- the start and stop times of your work as a
15 wood hauler, so that they'll have an understanding of how
16 many hours that you had to work at this job.

17 A. I woke up at 4:45 in the morning.

18 Q. Excuse me, I'm sorry. I'm not asking you to go into
19 great detail because you've already told us about the
20 details.

21 A. Oh, okay.

22 Q. I'm just trying to get a summary so that the jury will
23 have an understanding.

24 THE COURT: How many hours did he work a week? How
25 many weeks did he work? How many days of the week did he

1 work? You know, that's what I'm talking about.

2 MR. STILLEY: That's what I'm trying it get to.

3 THE COURT: Then get on to that. It's not
4 difficult.

5 MR. STILLEY: Okay.

6 BY MR. STILLEY:

7 Q. So about how many hours a week did you work at wood
8 hauling?

9 A. I worked eight to nine hours a day. I don't know.

10 Q. Times six days?

11 A. I worked Monday through Saturday and sometimes Sunday.

12 Q. And how many weeks of work did you do while you were
13 there?

14 A. The math you mean? Eight times six.

15 Q. I'm not asking about the math on that. I'm just asking
16 approximately how many weeks that you actually worked there.
17 What I'm trying to do is get you to exclude the times when
18 you were allowed to go to class and the times that you were
19 forced to stand in the corner. And just tell the jury about
20 how many weeks that you were on the wood hauling detail.

21 A. I was on and off and on. I was on like a month and
22 then I was on it for like three weeks. And if I wasn't
23 stacking wood, I was standing in the corner.

24 Q. Well, you told me about a month. You told me about
25 three weeks. Any other times?

1 A. I don't know the exact time.

2 Q. Well, how many other times were you on wood cut
3 carrying detail?

4 A. I was on it five times. I was --

5 Q. Well, was it about a month each time or so?

6 A. I was on it for three days one time and I was on it for
7 three weeks sometimes. I didn't know the exact.

8 Q. Did you ever volunteer to do this wood carrying?

9 A. No, sir, I was forced to do it.

10 MR. STILLEY: Your Honor, can I have just a moment
11 with my client?

12 Q. How much weight did you lose while you were at Mountain
13 Park?

14 THE COURT: Sustained. I keep warning you. I'm
15 going to talk to you in a minute. Maybe I'm going to have to
16 try some other measures with you.

17 MR. STILLEY: Your Honor, I'm very sorry.

18 THE COURT: No, this is not about that. You are
19 begging and you're asking for sympathy. That's what you're
20 doing. This is not about that, okay. You need to quit it.
21 I'm tired of warning you, okay. You are an officer of this
22 court, and you have to understand that. I heard you over
23 there telling your client, I'm going to ask this question.
24 You know, you keep stepping over the line. You are an
25 officer of this court first and foremost. I understand you

1 have a duty to represent your client, but I've talked to you
2 enough.

3 MR. STILLEY: I did not --

4 THE COURT: Sit down.

5 MR. STILLEY: I did not intentionally --

6 THE COURT: Sit down. Cross-examination.

7 MR. OLIVER: May it please the Court.

8 CROSS-EXAMINATION

9 BY MR. OLIVER:

10 Q. Mr. Palmer, you arrived -- first of all, you were never
11 at Palm Lane, correct?

12 A. Yes, sir, I was never there.

13 Q. Second, you arrived at Mountain Park on December the
14 2nd -- I'm sorry, December the 7th, 2002, correct?

15 A. Yes, sir.

16 Q. So Mr. Jordan Blair was long gone before you arrived
17 there, correct?

18 A. Yes, sir.

19 Q. You don't know him, never met him; isn't that right?

20 A. Yes, sir.

21 Q. You said that you came up from Texas, from high school.
22 Isn't the truth you came up from the special education
23 department of your high school, son?

24 A. Yes, sir.

25 Q. You were in special ed, weren't you?

1 A. Yes, sir.

2 Q. You were sent to Mountain Park by your grandfather?

3 A. Yes, sir.

4 Q. While you were there you received multiple letters from
5 your grandfather, in each case encouraging you to behave.

6 You see on the screen where he wrote you and said, doesn't it
7 feel good not having to stack wood, I know you could do it.
8 Didn't he say that?

9 A. Yes, sir.

10 Q. Didn't he also tell you Pastor Gerhardt and his staff
11 have the knowledge to make a man out of you, please listen to
12 them?

13 A. Yes, sir, but that --

14 Q. That was the advice that your grandfather who had legal
15 custody of you gave you, didn't he?

16 A. Yes, sir, but that was before he even knew what they
17 did.

18 MR. OLIVER: Thank you. Nothing else, Your Honor.

19 THE COURT: Anything else?

20 MR. STILLEY: Not at this point in time.

21 THE COURT: Very well. You may step down. You're
22 excused.

23 Ladies and gentlemen of the jury, why don't we
24 take -- maybe we'll get out of here by 5:30. Does that
25 create a problem for anyone, 5:30? Okay. Let's try. Why

1 don't we take a brief recess. Why don't you all be prepared
2 to return at five minutes to five, okay. Recall the
3 admonition.

4 (The following proceedings were held outside the
5 hearing of the jury:)

6 THE COURT: Mr. Stilley, you are an officer of this
7 court. There are rules. If you don't like them then take
8 them someplace else, not here.

9 Now, you keep going, you know, there's a marshal
10 here, we got a jail here. And maybe if you don't get the
11 message, I'm going to get in your pocket and lock you up,
12 okay. I'm tired of talking to you, you know. This is
13 failure to communicate here. And maybe there's another way.
14 You don't seem to get it. I can understand you being fervent
15 about your client, but don't you see, you are doing the same
16 thing that you want to think that these people are doing in
17 terms of going to extremes and being fervent. You are doing
18 this. So you need to step above this. And you are an
19 officer of this court. You see, you want to think that
20 somebody else is doing something fervently because of their
21 beliefs, but you then go in the other direction and you're an
22 officer of this court and you know better. There are rules
23 in here, and I keep telling you about them. If you don't
24 want to abide by them, then I will be in your pocket and you
25 will be locked up. You got it?

1 MR. STILLEY: Yes, Your Honor.

2 THE COURT: You better figure it out. I'm getting
3 tired of this.

4 (Court in recess from 4:39 p.m. until 4:53 p.m.)

5 THE COURT: I indicated that I would revisit this
6 motion for directed verdict on this Fair Labor Standards Act
7 claim, and that's why I wanted to get to this so we could
8 move ahead. And the Court having heard further evidence on
9 it, the Court is going to grant that motion.

10 MR. STILLEY: Judge, I'm not through presenting my
11 case. I've got two more witnesses.

12 THE COURT: No, you didn't tell -- what other
13 witness you got on Fair Labor Standards Act?

14 MR. STILLEY: Angela Collier and Melissa Smith.

15 THE COURT: What do they have to say?

16 MR. STILLEY: They took PE, and they can testify to
17 what PE is. And they will testify that PE did not consist of
18 anything about conventional PE just like in a public school.

19 MR. BRIGGS: Your Honor, as the testimony has
20 consistently been in this case, both from Mr. Blair and from
21 our clients, the girls and the boys maintained separate
22 schedules and do not do things together. Therefore, these
23 two women will not have testimony that will be relevant to
24 Mr. Blair's Fair Labor Standards Act claim.

25 MR. STILLEY: They didn't make any distinction

1 between girls and boys, they just said PE consists of a lot
2 of other things besides things like running, games,
3 basketball, et cetera.

4 THE COURT: There's been no showing that the
5 activities were the same between the girl -- between the
6 girls and the boys. I mean, the testimony was exactly the
7 opposite. They didn't -- the witnesses who had been on so
8 far have shown that they were completely separate, separate
9 dorms, separate activities, that they were separate. All
10 activities were separate.

11 MR. STILLEY: Well, am I going to be prohibited then
12 to testify about that?

13 THE COURT: How is it relevant if they are separate?

14 MR. STILLEY: I'm just asking for a ruling.

15 THE COURT: You've heard my ruling. I mean, you
16 understand English. I'm saying how is it relevant? I'm
17 asking you how is it relevant if they are separate?

18 MR. STILLEY: Well, on one of these -- let me make
19 my best shot at showing that it's relevant. On one of these
20 girls, she would testify that they tried to do some other
21 activities, I believe it was another sport, and was not
22 allowed to do that even though it was what would be
23 considered typically physical education type deal. But it's
24 in the Court's judgment that the matters concerning the girls
25 does not have any bearing on matters concerning the boys then

1 I don't have anything except these two young ladies.

2 THE COURT: Fine. Well, I'm going to exclude their
3 testimony relative to the physical education portion of it.
4 There's been no evidence that the activities were the same.
5 The evidence is that they were completely separate and
6 different and apart. And assuming even if they were the same
7 as your client testified to, the Court is still going to find
8 that these activities were part of the educational program of
9 this institution for the benefit of the students and not to
10 the benefit of the defendants. So that claim is gone. The
11 Court is granting that directed verdict there.

12 So here we are now, we're going to continue on on
13 this battery claim.

14 MR. STILLEY: Judge, I had a motion -- I mean, I had
15 a response that I wanted to make to the Court. Would the
16 Court prefer I make this in writing?

17 THE COURT: Relative to what?

18 MR. STILLEY: Reference to the Fair Labor Standards
19 Act. I wanted to preserve the record and show the argument
20 that I would make that that case should be submitted to the
21 jury. Can I present that now or do you want me to just file
22 that through the ECF system? I mean, I'm asking that I be
23 able to make my arguments now because that might persuade the
24 Court to change its mind. But I certainly have not --

25 THE COURT: You had asked to brief this whole issue.

1 I have all the briefs I need, okay. I made my ruling.

2 That's that. We're moving on.

3 The defendants ready to continue with this battery
4 portion of the case?

5 MR. OLIVER: Yes, we are, Your Honor.

6 THE COURT: Go ahead. Call -- we'll bring the jury
7 in and we'll call the next witness.

8 MR. BRIGGS: Your Honor, we would like to offer one
9 exhibit that we already used in the case into evidence. I
10 neglected to do that.

11 THE COURT: What is that?

12 MR. BRIGGS: Defendants' Exhibit A, Your Honor.

13 THE COURT: Any objection to A?

14 MR. STILLEY: No objection. Does that make A, C,
15 and D in?

16 THE COURT: Fine, they will be received then A, C,
17 and D.

18 (The following proceedings continued within the
19 hearing of the jury:)

20 MR. BRIGGS: Your Honor, defendants call Drew
21 Parrish to the stand.

22 DREW PARRISH,

23 Having been first duly sworn, was examined and testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. BRIGGS:

2 Q. Sir, would you please state your full name for the
3 record.

4 A. Drew Parrish.

5 Q. And, Mr. Parrish, why don't you spell the last name
6 too.

7 A. P-a-r-r-i-s-h.

8 Q. Very good. Thank you, sir. Mr. Parrish, were you
9 employed by Mountain Park Baptist Church and Boarding Academy
10 at one point in time?

11 A. Yes, I was.

12 Q. Okay. Can you define the span that you were employed
13 at Mountain Park, those dates?

14 A. It was after I graduated in 2001. So maybe 2001 until
15 August of 2003.

16 Q. Okay. And during that time were you employed as a
17 staff member?

18 A. Yes.

19 Q. Since leaving Mountain Park, what have you done? What
20 are you doing now?

21 A. I'm currently enrolled in Crown College of the Bible in
22 Powell, Tennessee.

23 Q. And you've come from Tennessee to testify in this case?

24 A. Yes, I have.

25 Q. When you were a staff member at Mountain Park, was one

1 of your responsibilities to greet new students who arrived on
2 campus?

3 A. Yes, it was.

4 Q. And that was specifically male students?

5 A. Yes.

6 Q. Did you have -- in your responsibility as greeting new
7 male students, do you recall meeting Jordan Blair?

8 A. Yes, I do.

9 Q. Okay. Is there a particular reason why you recall
10 meeting Mr. Blair?

11 A. I remember meeting him because he came in and he was
12 escorted by an Arkansas police officer and he was in
13 handcuffs.

14 MR. STILLEY: Objection, move to strike.

15 THE COURT: The jury will disregard that.

16 Q. Continue from there.

17 A. And what else was the question?

18 Q. What other part -- well, what other part of the meeting
19 do you recollect that you haven't said already?

20 A. I remember taking him down to the dorm and getting him
21 in the shower and waiting with him for dinner.

22 Q. Okay, very good. And, Mr. Parrish, do you recall
23 meeting him, that when you met him that he was in handcuffs?

24 MR. STILLEY: Objection.

25 THE COURT: Overruled.

1 A. Yes, I do.

2 Q. And did Mountain Park put the handcuffs on him?

3 A. No, they did not.

4 Q. Okay. After the handcuffs were removed, you said that
5 you took him down to the dorm. Were you alone when you met
6 him?

7 A. No, I was not.

8 Q. Who was with you at the time?

9 A. Matt Elmore.

10 Q. So then you and Mr. Elmore walked with Mr. Blair down
11 to the dorm?

12 A. Yes.

13 Q. And then you say that you took him into the dorm area
14 to take a shower?

15 A. Yes.

16 Q. Okay. And during that time frame did Mr. Bo Gerhardt
17 come on the scene and meet Mr. Blair?

18 A. Yes, he did.

19 Q. Mr. Parrish, do you recall during that meeting around
20 the shower area or in the bathroom area, do you recall seeing
21 whether Mr. Gerhardt ever pushed or shoved Mr. Blair into a
22 bathroom sink or wall?

23 A. No, I do not.

24 Q. You never saw that happen?

25 A. No.

1 Q. Okay. And if you had seen something like that happen,
2 you would remember it; is that correct?

3 A. Yes.

4 Q. If you had seen that happen, would you have reported it
5 to the staff at Mountain Park?

6 A. Yes, I would have. I would have told Sam Gerhardt.

7 Q. Very good.

8 MR. BRIGGS: That's all I have. Thank you.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. STILLEY:

12 Q. You're no longer employed by Mountain Park; is that
13 correct?

14 A. Yes.

15 Q. When did you cease employment?

16 A. I believe it was around August of 2003.

17 Q. And how long were you at Mountain Park?

18 A. As a staff member?

19 Q. In any capacity.

20 A. Approximately five years.

21 Q. And how did you arrive at Mountain Park? Did you come
22 as a student?

23 A. Yes, I did.

24 Q. And how long were you a student?

25 A. For approximately three years.

1 Q. And what happened after the three years?

2 A. I graduated.

3 Q. And did you -- after you graduated you apparently then
4 became a staff member?

5 A. Yes.

6 Q. Were you told anything about a no-touch policy or
7 policy of that nature?

8 A. Yes.

9 Q. What were you told that that policy was?

10 A. That under no circumstances any staff is to touch any
11 student in an aggressive manner.

12 Q. All right. During the five years that you were there,
13 did you ever see that policy violated?

14 MR. BRIGGS: Objection, Your Honor, that's outside
15 the scope of direct.

16 THE COURT: Sustained.

17 BY MR. STILLEY:

18 Q. How much contact did you have with Jordan Blair?

19 A. I don't know, a lot I guess.

20 Q. Give us a time frame of your contact.

21 A. His whole enrollment.

22 Q. How did it come to be -- you were in contact with
23 him, okay, his whole enrollment at Mountain Park?

24 A. I'm sorry?

25 Q. Was it his whole enrollment at Mountain Park?

1 A. Yes.

2 Q. What about at Palm Lane, were you ever involved, did
3 you see him at Palm Lane?

4 A. Yes.

5 Q. And for how long did you see him at Palm Lane?

6 A. Until he left Palm Lane.

7 Q. You go to Palm Lane with him?

8 A. Yes.

9 Q. Has anybody told you what your testimony should be in
10 this case?

11 A. No.

12 MR. STILLEY: Your Honor, can I have just a moment?
13 Pass the witness.

14 MR. BRIGGS: We have nothing further, Your Honor.

15 THE COURT: Thank you, Mr. Parrish. You may step
16 down.

17 MR. OLIVER: The defendant rests, Your Honor.

18 MR. STILLEY: Your Honor, we do have some rebuttal.
19 Can I have about 15 minutes? I cannot?

20 THE COURT: No.

21 MR. STILLEY: Okay.

22 THE COURT: Who do you have? Call it.

23 MR. STILLEY: Okay. Ray Palmer.

24 MR. OLIVER: He wasn't there during the relevant
25 period of time. Anything he says is irrelevant.

1 THE COURT: Has he got something to say about this
2 battery?

3 MR. STILLEY: Judge, I don't want to say things I
4 shouldn't in front of the jury. Can we please come up? I
5 don't want to say anything I shouldn't say.

6 THE COURT: Come up.

7 (The following proceedings were held at the bench
8 and outside the hearing of the jury:)

9 MR. STILLEY: Let me explain what he can testify to
10 and let you rule if I can put this on or not. I'm not
11 trying --

12 THE COURT: Fine. Tell me what he has got to say.
13 I don't need an explanation.

14 MR. STILLEY: While he was carrying the wood there
15 was another kid and they told him he was not carrying the
16 wood fast enough and he said I can't carry it faster. And
17 they shoved him and shoved him into the wheelbarrow that he
18 was using to carry the wood and put about an inch long gash
19 in his leg. He asked for medical care on it and they didn't
20 give him any medical care, they just slapped a little salve
21 on it. And he's got about an inch long scar on his leg from
22 being shoved into that.

23 THE COURT: Fine.

24 MR. OLIVER: Your Honor, it's irrelevant and not
25 relevant in time and place. It doesn't have anything to do

1 with Bo Gerhardt.

2 MR. STILLEY: It's the policy.

3 MR. OLIVER: It's other acts. He can't prove --

4 THE COURT: I am excluding that. That's excluded.

5 MR. STILLEY: Let me see what else I've got here, if
6 anything.

7 THE COURT: The pitching rotation.

8 MR. STILLEY: I understand, Judge, but I'm just
9 about done here.

10 THE COURT: Fine.

11 MR. STILLEY: He said that Mr. Gerhardt -- and these
12 are his words from an e-mail. He said one day he was
13 stacking wood and Mr. Gerhardt beat the crap out of me
14 several times. And when this happens he takes me in a room
15 alone and starts hitting. He did this to me once in the new
16 boys' dorm and another time out back near the school and also
17 when I first got there. And then he says I never really been
18 away from home. Can I put that on?

19 MR. OLIVER: Same objection, Your Honor.

20 THE COURT: You know, here we got a different act.

21 MR. STILLEY: I'm trying to prove that their
22 no-touch policy is not true. They say they have one.

23 THE COURT: They may have a policy. That doesn't
24 say that they still don't have the policy. You're saying
25 that this witness said Mr. Bo Gerhardt took him in the room

1 so nobody could see, he didn't want anybody to see he was
2 violating the policy according to your proposed testimony.

3 MR. STILLEY: Correct. Correct.

4 THE COURT: That doesn't change the fact that they
5 have a policy. Well, you know, a lot of people got a policy.

6 MR. STILLEY: They said they followed the policy.
7 I'm trying to show they didn't follow the policy.

8 THE COURT: That's why we got courtrooms, police
9 officers and everything else because some people sometimes
10 don't follow the policy. But we're talking about whether the
11 policy was followed with your client.

12 MR. STILLEY: That's the testimony I've got.

13 THE COURT: Okay, him. That's him. That's
14 Mr. Palmer. Who else you got?

15 MR. STILLEY: Well, I'm not even going to try the
16 rest. I'm not going to get the rest in.

17 THE COURT: You're a smart fellow. Are we resting
18 completely then?

19 MR. OLIVER: We're finished.

20 THE COURT: Fine. We'll do an instruction
21 conference shortly and have the jury come back tomorrow
22 morning at nine and argue this case.

23 MR. STILLEY: Certainly, Judge. Judge, I hope you
24 understand. I appreciate the opportunity to --

25 THE COURT: I understand. You are a fervent

1 believer in what you're talking about. That's all good. But
2 can't you see the fervency in which they believe what they
3 are doing and then the fervency of you over here. See, you
4 are an officer of the court. You see what I'm saying? It's
5 different. Now, you want to bad mouth somebody else and talk
6 bad about them about them doing some things you fervently
7 believe aren't right that they are doing, but those things
8 are not part of this case. And you're supposed to exercise
9 more control. You are a lawyer and an officer of this court.
10 That's the difference, okay. So then you are worse than
11 them, and you don't see that. You don't see it.

12 (The following proceedings continued within the
13 hearing of the jury:)

14 THE COURT: Both parties are resting, ladies and
15 gentlemen ladies of the jury. We're going to adjourn for the
16 day and try to get some things together so this show can go
17 along smoothly tomorrow morning hopefully.

18 You all have a pleasant evening. Recall the
19 admonition. See you -- return to your jury rooms at 9 a.m.
20 in the morning, okay.

21 (The following proceedings were held outside the
22 hearing of the jury:)

23 THE COURT: We're going to do this instruction
24 conference now so that we can get along smoothly here
25 tomorrow morning.

1 MR. OLIVER: Your Honor, would it be easier for the
2 Court if I simply brought you an MAI battery package start to
3 finish rather than going through and fighting about it?

4 THE COURT: No.

5 MR. OLIVER: Okay.

6 THE COURT: Because if we wait till tomorrow, there
7 will be problems.

8 MR. OLIVER: All right.

9 THE COURT: You know, it's like a song a guy sings
10 called Raindrops, LaVert says, "I got places to be and people
11 to see." See, if I delay, it will get bad. So I got to get
12 you all locked in now.

13 Now, this is what we need to do. We need to put a
14 clean copy and a citated copy of instructions together. And
15 we will have a stack of agreed and a little bitty stack of
16 disagreed. You know, because there was another guy, he was a
17 great philosopher from California, his name was Rodney King,
18 he said, "Can't we all just get along, please?"

19 See, so we're going to try to get along and have
20 this small stack of instructions. And, you know, of course
21 it's going to start with the instruction I gave at the
22 beginning of the trial will not be repeated here. Do we have
23 all that stuff in here, these stacks? Do we have those
24 instructions, the basic boilerplate?

25 MR. OLIVER: Judge, I'd be glad to take all of those

1 and sort them out for you and get you when you we get them
2 sorted out.

3 THE COURT: That's what I'm talking about, but
4 you'll need Mr. Stilley's stack so you have a very small
5 stack of disagreed, because we're going to make this record
6 today.

7 MR. OLIVER: Judge, I don't have -- yes, sir.

8 THE COURT: I'm going to give you all mine. Now, do
9 you have those initials in there and the last one will be
10 giving the jury directions about unanimity and so forth.

11 MR. OLIVER: I know the only thing that's not typed
12 that's good is a form of verdict.

13 THE COURT: Well, we can figure out how that should
14 be and that will make it very simple tomorrow morning because
15 we will have agreed upon that.

16 You can join him over there, Mr. Stilley.

17 (Court in recess from 5:15 p.m. until 5:38 p.m.)

18 THE COURT: I'm going to go through all those you
19 have agreed. Proposed Instruction No. 1 is a Model Jury
20 Instruction 3.01, which starts with, "Members of the jury,
21 the instructions I gave at the beginning of the trial and
22 during the trial remain in effect, I'm now going to give you
23 some additional instructions." That would be No. 1. Any
24 objection to that?

25 MR. STILLEY: No objection.

1 MR. OLIVER: None, Your Honor.

2 THE COURT: Proposed No. 2 is MAI -- Model Jury
3 Instruction 3.02, which begins with, "Neither in these
4 instructions nor in any ruling, action, or remark that I have
5 made during the course the trial have I intended to give any
6 opinion or suggestion as to what I think your verdict should
7 be." Any objection to that?

8 MR. STILLEY: None.

9 MR. OLIVER: No, sir.

10 THE COURT: No. 3 is the credibility instruction of
11 the Model Instructions 3.03. It starts with, "In deciding
12 what the facts are, you have to decide what testimony you
13 believe and what testimony you do not believe." Any
14 objection to that?

15 MR. STILLEY: None.

16 MR. OLIVER: No, Your Honor.

17 THE COURT: Okay. Proposed Instruction No. 4 is
18 3.04 of the Eighth Circuit Model Instructions, about burden
19 of proof. It starts, "In these instructions you're told your
20 verdict depends on whether you find certain facts have been
21 proved," and then goes on to what the burden is, of greater
22 weight or preponderance of the evidence.

23 MR. STILLEY: No objection.

24 THE COURT: Okay, fine. Proposed Instruction No. 5
25 is the verdict director relative to battery. It's MAI then

1 23.02. It says, "Your verdict must be for plaintiff if you
2 believe: First, defendant intentionally pushed plaintiff;
3 and second, defendant thereby caused a contact with plaintiff
4 which was offensive to plaintiff; and third, such contact
5 would be offensive to a reasonable person." Is that it?

6 MR. STILLEY: That is correct.

7 THE COURT: Okay.

8 MR. OLIVER: Judge, we have no objection. I'm
9 assuming that some time the Court is going to tell the jury
10 that Bo Gerhardt is the only defendant remaining.

11 THE COURT: Yes.

12 MR. OLIVER: Otherwise that would be confusing.

13 THE COURT: And I don't have any problem with you
14 all indicating that also to remind them in any sense. But I
15 need to remind -- tell them that the only claim remaining is
16 the battery claim against the remaining defendant Bo
17 Gerhardt.

18 So this proposed Instruction No. 6 is the damage
19 instruction. "If you find in favor of Jordan Blair against
20 Defendant Bo Gerhardt, then you must award Jordan Blair how
21 much will fairly compensate him and so forth." Any objection
22 to six?

23 MR. STILLEY: No, objection.

24 MR. OLIVER: None, Your Honor.

25 MR. STILLEY: Actually, Judge, I'm going to need to

1 have -- I want a punitive instruction, so we might need to
2 put two blanks, a blank for punitive.

3 THE COURT: What gives you the basis for me to even
4 give a punitive instruction?

5 MR. STILLEY: Intentional tort.

6 MR. OLIVER: There's no evidence of any intent.

7 THE COURT: No, I will -- I'm ruling now that the
8 Court will not give a punitive damage instruction. So that's
9 that.

10 Instruction No. 7 is 3.06 of the Eighth Circuit
11 Model Jury Instructions. It directs them how to conduct
12 their deliberations.

13 Now, I'll tell you what. Are we straight with all
14 the instructions so far? Are there any others?

15 MR. OLIVER: If you tell me how you want the form of
16 verdict, I'll bring you one typed in the morning.

17 THE COURT: I don't know how I want it. We're going
18 to discuss that now and figure it out. Maybe you all can
19 draw something up and we can agree on it. But what I'm going
20 to do, I'm going to give you this clean copy and maybe you
21 can just have them run off tomorrow without the caption up
22 here.

23 MR. OLIVER: Yes, sir.

24 THE COURT: Where it says the numbers and so forth.

25 MR. OLIVER: Yes, sir, I'll take that out.

1 THE COURT: So I'm going to give those to you and
2 I'll keep the other copies. And you can just bring us all.
3 Because I don't want the jury to have any citations about
4 them about the title at all.

5 What about the form of verdict?

6 MR. OLIVER: Your Honor, I'd be glad to type a
7 simple one right out of MAI, if you find the issues in favor
8 of -- we the undersigned jurors find the issues in favor of,
9 blank, insert the name. Then, you know, the next paragraph,
10 if you find in favor of the plaintiff, then insert the amount
11 with eight signature blanks -- one signature blank.

12 THE COURT: One signature blank, the foreperson, and
13 date. Do you have any disagreement with that, Mr. Stilley?

14 MR. STILLEY: Sounds good to me, Judge.

15 THE COURT: Let's do that. I'll see you all at nine
16 in the morning.

17 Now, how much time do you wish to argue your case,
18 Mr. Stilley?

19 MR. STILLEY: Twenty minutes would be plenty.

20 THE COURT: Twenty minutes would be more than
21 plenty. How about 15 minutes? You just got this -- and
22 that's five minutes too much. All you got now is a battery
23 claim.

24 MR. STILLEY: I understand, Judge. And 15 minutes,
25 I agree with you.

1 THE COURT: All we got is a battery claim. You
2 think about what the testimony was relative to that, and 15
3 minutes is five too much.

4 MR. STILLEY: I agree with you, Judge, I think
5 you're right in your analysis.

6 THE COURT: Now, how do you want to divide that?
7 What do you want to reserve?

8 MR. STILLEY: Five.

9 THE COURT: Ten and five. What kind of warnings do
10 you want on each?

11 MR. STILLEY: Do you have a light that can come on?
12 Are you talking about -- oh, you're talking about warning?

13 THE COURT: You know, it's either like the gong
14 show, they put a hook out, drag you off the stage or they
15 gong you.

16 MR. STILLEY: I'd rather not get dragged off the
17 stage.

18 THE COURT: What do you want, two minutes on the
19 first one and a minute on the second?

20 MR. STILLEY: A minute is just right.

21 THE COURT: A minute on both, on the first ten or
22 two minutes on the first ten?

23 MR. STILLEY: Two minutes on the first ten, one
24 minute on the second.

25 THE COURT: Okay. What kind of warning you want,

1 Mr. Oliver?

2 MR. OLIVER: Two minutes will be fine, Judge.

3 THE COURT: As Tupac Shakur said, Mr. Stilley, but I
4 ain't mad at you.

5 MR. STILLEY: Thank you, Judge.

6 THE COURT: I don't take this personal.

7 MR. STILLEY: I appreciate that, Judge. And I feel
8 the same way about it. And it's been a great pleasure
9 practicing in your court. Thank you very much.

10 THE COURT: It's good to be fervent. And some folks
11 would clearly dislike the methods and manners with which they
12 undertake what they do. And I don't know that this is
13 necessarily a proper forum unless you got the parents
14 cosigning on with saying that something different happened
15 than they proposed.

16 Now, maybe the proper forum are the state licensing
17 authorities or something, but, you know, the fervency has a
18 problem here where we have these rules and you have to
19 conduct yourself within the rules. So in terms of presenting
20 your client's case and how fervently you feel, you keep
21 stepping over the line, and that's where the problem is. And
22 as I told you, don't think that I'm going to keep calling you
23 up here to the bench and tell you about it. I'm going to
24 bust you up in front of this jury so that they will know.
25 Because when you continue to do it, it does no good to have

1 you up here. The jury has to know that you continually do
2 something. So that's what I'm telling you, it's not going to
3 do any good with me.

4 Because it's like a friend of mine, he was swinging
5 his golf club in the house in the winter. And he swung down
6 in his shag carpet and he took a divot out. And his son was
7 eight or nine years old. And he looked at him and said, "I'm
8 going to tell mama." Because he was trying to stomp it back
9 in. So, see, I will tell.

10 MR. STILLEY: I will try real hard to not take a
11 divot out tomorrow.

12 THE COURT: I know it's hard. But this thing, this
13 case, when you don't have parents or whatever cosigning on
14 this deal saying that this isn't what they signed up for, you
15 got a problem with this case. And sometimes if you want
16 results, you want -- you got to figure out how you can get
17 it. And it didn't seem to me that this was the proper forum
18 for that. So whatever. I understand your fervency.

19 MR. STILLEY: Thank you, Judge. I appreciate it.

20 THE COURT: I'll see you all tomorrow morning.

21 MR. OLIVER: Nine o'clock.

22 (Court in recess at 5:47 p.m.)

23

24

25

C E R T I F I C A T E

I, Susan R. Moran, Registered Merit Reporter, in and for the United States District Court for the Eastern District of Missouri, do hereby certify that I was present at and reported in machine shorthand the proceedings in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 1 - 227 and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand at St. Louis, Missouri, this _____ day of _____, 2004.

/s/ Susan R. Moran
Registered Merit Reporter